Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL., ETC., APPELLANTS,

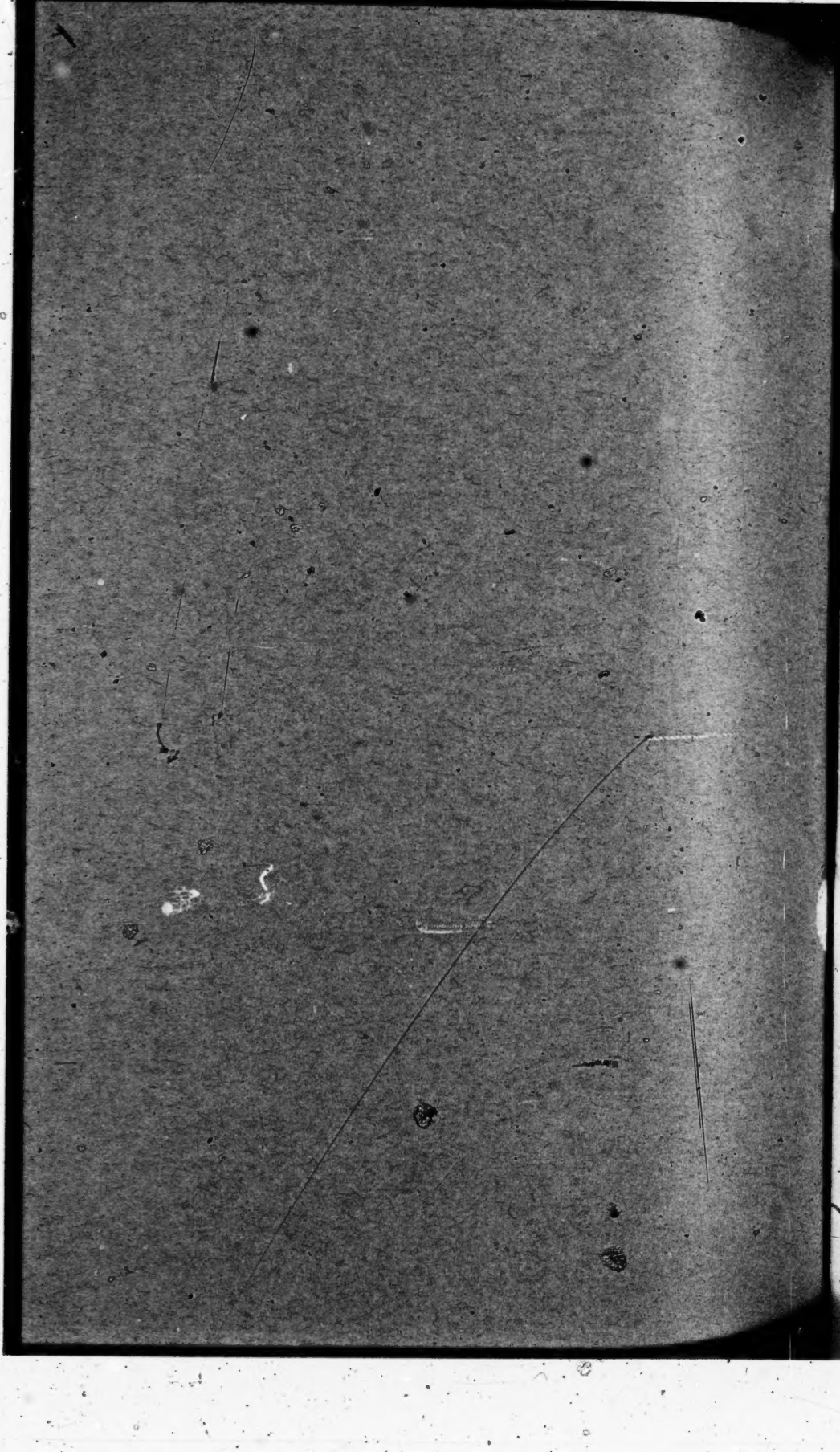
vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED NOVEMBER 18, 1930

(35,477)



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I have not made computations respecting the Georgia intrastate revision except it affects movements originating on our line, as to whether it increases or decreases the charges in the aggregate. I sought to make an estimate for you but decided I had better not. I excluded consideration of the rate level on these products in the valley in my summary of rate comparisons because there is going to be another witness who will deal with valley rates (Rec., 533).

I do not know of any origin point which has rates to Atlanta on sand, gravel, crushed stone and slag that are on a basis lower than the Georgia scales.

(Witness excused.)

F. A. BURKE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Commerce Agent for the Nashville, Chattanooga & St. Louis Railway at Nashville, Tenn., and have been connected with its Traffic Department for a number of years.

There are three routes from Chattanooga to Atlanta, the Southern, the Central of Georgia, and the N. C. & St. L. and the N. C. & St. L. is the shortest route, with a distance of 137 miles. There is one sand pit on the Atlanta Division [fol. 200] of the N. C. & St. L. between Chattanooga and Atlanta, located at Allatoona, Ga., about 40 miles north of Atlanta or 97 miles south of Chattanooga (Rec. 535).

At Graysville, Ga., there is a stone crusher, which is 16½ miles south of Chattanooga and 120 miles north of Atlanta, right at the Tennessee-Georgia boundary line. There is one shipper at Chattanooga who ships sand and gravel and he comes in competition with the crushed stone from Graysville with their gravel. There is a substantial movement of crushed stone from Graysville and a substantial movement of gravel from Chattanooga. In explanation of what my exhibits are intended to show, I may say that No. 158 shows the present rates on gravel from Chat-

tanooga contrasted with the rates for the same distances on the Georgia Commission's scale.

I will illustrate one point, from Chattanooga to Albany, Ga., the third point on the exhibit, the rate on gravel is $1.80 from Chattanooga; for the same distance on the Georgia Scale, the rate on gravel or crushed stone would be $1.70, and on clay gravel and sand it would be $1.60. That is illustrative of the entire exhibit, which consists of three pages (Rec., 536).

My Exhibit No. 159 contrasts the present rates on gravel from Chattanooga, Tenn. with the rates on crushed stone from Graysville, Ga., sand and gravel. Well, really the gravel is where that competition exists, gravel with the crushed stone. This exhibit speaks for itself.

My Exhibit No. 160 compares the interstate scale of the N. C. & St. L. Railway on the Atlanta Division, which applies from Chattanooga, with the intrastate rates that are applicable on that division between points in Georgia. The intrastate scale applies on crushed stone from Graysville, Ga., and the interstate scale applies on gravel from Chattanooga, Tenn., to points on that line in Georgia. This [fol. 201] exhibit speaks for itself.

Exhibit No. 161 compares the scale applicable on the N. C. & St. L. Railway from stations north of Chattanooga to stations on the Atlanta Division in Georgia. Now, there is a movement, or has been a movement of sand and gravel from Estill Springs, Tenn., which is located between Chattanooga and Nashville on the N. C. & St. Railway, to points in Georgia on the N. C. & St. L. Railway. This exhibit speaks for itself (Rec., 537).

Exhibit No. 162 compares the rates on sand and gravel to representative points in Georgia with the rates as they would be under an application of the Memphis-Southwestern Scale.

Exhibit No. 163 compares the present rates from Chattanooga with the rates as they would be on the Shreveport Scale. In connection with these two exhibits, on my later exhibits, I have shown the present rates from Chattanooga to Dalton, Rome, Atlanta and Augusta, Ga., and opposite those rates I have shown the proposed rates. The present rates are less than the carriers' proposed scale, and it is the purpose of the carriers, provided the Commission ap-

proves it, to increase the present rates to those points to the basis of the carriers' proposed scale, and I have endeavored to justify the proposed rates as well as the present rates from Chattanooga to those points.

My Exhibit No. 164 is similar to the two preceding exhibits, and compares the rates to specific points in Georgia with the mileage scales prescribed by the Intertsate Commerce Commission in I. C. C. Dockets 9389 and 13662. In showing the rates in I. C. C. Docket 9389, I have used the rates as set out in Interstate Commerce Commission's decision in Docket 16021, 100 I. C. C., 411, and those rates represent the existing rates as we understand them; in other words, it does not contain the entire increase of 40 per cent under Ex Parte 74 (Rec., 538).

[fol. 202] No. 165 is self-explanatory and No. 166 contains excerpts from the Commission's decisions in which they have held that rates in the South might reasonably be higher than the rates in C. F. A. and Trunk Line Territories. As to Exhibit No. 168, I call attention to the fact that through error the proposed rate from Chattanooga to Dalton is shown as 70¢. This should read 77¢ under present rates. Exhibit No. 169 has reference to rates which the Interstate Commerce Commission dealt with from Graysville, Georgia. In that case, the N. C. & St. L. took the position that the existing rate from Graysville to Chattanooga was submormal, but the Commission found that the rates in effect at that time were not unreasonable. The rates I have shown are the modern equivalent of the rates found not unreasonable by the Commission in 1916 (Rec., 539).

In other words, that rate from Graysville to Jacksonville, for example, would be $2.25 at the present time, whereas our proposed joint line scale is $2.12.

By Exam. Waters:

Q. Is it that at present, that rate from Graysville today, does that represent the existing rate?

A. No, these are the rates that the Commission found not unreasonable in 1916, increased the specific amounts, I did not go back to check up the rate from Graysville.

The Complainant's Exhibit No. 12 filed by Mr. Ribe undertakes to show rates from certain Tennessee points to

Memphis, Tenn., and I wish to call attention to this exhibit understand, it shows the movement of sand from Summerville, Tenn., and shows Summerville as located on the Louisville & Nashville Railroad; Summerville is not located on the L. & N. Railroad, but is located on the Southern Railway and the N. C. & St. L. Railway, and there is no movement of sand from Summerville. And he also shows Warren, Denmark and Jackson, Tenn., in this exhibit; there is no movement of sand from those points. And he shows a [fol. 203] movement of gravel from Mercer, Denmark and Summerville, Tenn., and there is no movement of gravel from those points (Rec., 540). Now, he shows in that exhibit some rates of the N. C. & St. L. Railway on stone and gravel to Memphis, Tenn., but he did not explain that those rates were highly competitive rates; in other words, the N. C. & St. L. Railway was forced by competition to establish some very low rates to points in West Tennessee in order to enable the quarries and gravel pits to compete with the nearby gravel pits from which the rates were very low, and for this reason we have put in these very low rates to Memphis, Tenn.

The comparison of the interstate scale applicable west of Chattanooga on the N. C. & St. L. with the interstate scales applicable in Tennessee, is shown by my Exhibit No. 170. We took the position that the intrastate rates in Tennessee on the sand and gravel are below the normal low; our several attempts to increase these rates have been denied by the Tennessee Commission.

My Exhibit No. 171 shows the comparison of rates from Estill Springs, Tenn., on sand and gravel, with the joint line scale. These last two exhibits were put in as rebuttal testimony to show that the rates shown in Complainant's Exhibit No. 12 were less than the rates charged in a number of instances in Tennessee. Now, I beg to call attention in my Exhibit No. 171 in order to show that there is a movement of sand and gravel from Estill Springs, Tenn., to Louisville & Nashville Railroad stations (Rec., 541).

Mr. Gwathmey: Mr. Examiner, we now make formal tender of Mr. Burke's Exhibits Nos. 157 to 171 inclusive.

Exam. Waters: They will be received unless there is objection, and made a part of the record.

(The statements were thereupon received in evidence, marked "Defendant's Exhibits Nos. 157 to 171 inclusive," Witness Burke," and are forwarded herewith.)

[fol. 204] Cross-examination.

By Mr. Brooker:

At the present time our rates from Chattanooga and Graysville to Atlanta are now on the basis of the Georgia mileage scale and on August 1st our interstate rate from Chattanooga to Atlanta was increased under the application of the Georgia scale. There was a low competitive rate from Chattanooga to Atlanta that was put in to enable the Chattanooga man to ship to Atlanta in competition with slag from Birmingham and was made the same as the slag rate from Birmingham to Atlanta (Rec., 542).

Prior to August 1, 1925, the rate from Chattanooga to Atlanta was established in order to enable the gravel people to compete with the Birmingham slag rates. The production at Allatoona, Ga., is not big, about 18 cars of sand were handled in 1925. The movement from Estill Springs, Tenn., to Georgia points was relatively small, as we handled about 7 cars in 1925.

Q. Your Exhibit No. 169, showing rates on crushed stone from Graysville, Ga., to destinations in Florida since the decision of the Interstate Commerce Commission in that case, isn't it true——

Exam. Waters: What case?

Mr. Brooker: The case mentioned on that page, I. C. C. Docket 7062, isn't it true that this basis which the carriers are now proposing has been adopted and is used in formulating the rates from Birmingham and Chattanooga districts to those stations (Rec., 543)?

A. I can't answer as to Birmingham, we don't serve Birmingham, but we did check in rates from Chattanooga and Graysville, Ga., in line with the carriers' proposed scale, that is generally, there were some exceptions to that. [fol. 205] Practically all of the commodity rates which have been established within the past few years have been put into effect on a basis not higher than the carriers' pro-

posed scale in this proceeding. As to the intrastate rates mentioned in my Exhibit No. 170, we think our scales are below what might be reasonable maximum rates in Tennessee. If the carriers' proposed scale were applied to both interstate and intrastate movements in Tennessee, it would result in advances in some cases, but I could not say that they would be material advances; Exhibit No. 170, however, shows the result of applying the proposed scale (Rec., 544).

In a good many cases it is true that our present interstate rates in Tennessee are lower than the carriers' proposed scale. We handled one car of sand from Chattanooga to Atlanta in 1925. I do not know whether the other lines handled any or not. We handled no crushed stone from Chattanooga. If we did handle sand or crushed stone from Chattanooga to Atlanta, it would not move in returned empty coal equipment. The movement of coal is southbound (Rec., 545).

By Mr. Cotterill:

The N. C. & St. L. has a great deal of branch line mileage and the majority of that mileage is in the mountain sections. There are widely contrasted differences in operating circumstances between those mountainous branches and some portions of our main line. At one time we carried three mileage scales on sand between our stations, and we made rates on the branch lines higher than we did on the main line, but finally we got away from that and adopted the main line scale for application over the entire system. The fact is, our existing mileage rate structure and that now proposed here is for uniform application over all parts of our system as a maximum scale. That rate level would be applicable in the lowland sections of the South, but we are not now making particular stress of the mountainous territory we serve (Rec., 546).

[fol. 206] Mr. Gwathmey: Mr. Examiner, I assume it is understood by everybody that we are not here in this proceeding making any proposal to adjust the entire rate structure in the South or in the state of Tennessee; the carriers have said that it is their clear intention if they can do it to apply their proposed scale generally interstate and intrastate, but that really is not in issue here, and it

seems to me it is rather unnecessary to go into detail as to what the application of the scale would do here and there; if it were a matter at issue now as to whether it should be applied all over the South, I have no particular objection, but it seems to me it is rather taking up time.

Mr. Cotterill: I was of the impression that the carriers attributed to their proposed scale the merit that it was suitable for uniform and general application throughout the South, and was conceived in that purpose.

Mr. Gwathmey: But there is no issue of that sort here.

Commissioner Lewis: I understand the question that Mr. Cotterill is trying to ascertain from this witness is whether it is thought by this witness that one scale will meet all operating conditions equitably down in this district, is that correct, Mr. Cotterill? (Rec., 547.)

Mr. Cotterill: Yes, sir.

Commissioner Lewis: Taking into consideration the mountain regions and the low regions?

Mr. Cotterill: Yes, sir.

Commissioner Lewis: You are insisting here that back of all this and particularly brought in issue here by the carriers' proposal is the placing before the Commission of one scale which would be applicable to all these regions down here?

Mr. Cotterill: Yes, sir, and I frankly am anticipating the [fol. 207] point of view of one of the lines not yet heard from, in which, in contrast with the point of view of the other Defendants, it suggests that under some circumstances there should be a different rate level over different portions of its line, and I had thought that it was appropriate in considering the proposed scale of the carriers as a whole, to make it apparent in the record that the measure of that scale was conceived with the thought of general application, and disregarding any variation of operating detail. I think that discussion has gone sufficiently far, and there is no occasion to go into it any deeper now (Rec., 548).

By Mr. Moffett:

We have a rate on slag from Cowan, Tenn., to Atlanta, Ga., the figure of which I don't recall, but the distance is approximately 200.9 miles; if the published tariff is $1.30, that is the legal rate.

By Mr. Price:

The decision of August 1st necessitated an increase of these competitive rates from Chattanooga to Atlanta, Rome and Dalton, to clear the Georgia scale. Those are the principal points of consumption that would use our materials out of Chattanooga (Rec., 549).

We made no revision of rates that were non-competitive and higher than the Georgia scale out of Chattanooga. The revision covered only competitive rates.

By Mr. Brooker:

The big movement in gravel from Tennessee points over our line is to Atlanta and the big movement in crushed stone from Graysville was also to Atlanta.

By Mr. Price:

I believe the rate from Graysville to Atlanta was increased under the Georgia revision.

Commissioner Lewis: Mr. Gwathmey, this witness ap- [fol. 208] pears in the role of the Defendant I guess in one of these complaint cases, doesn't he?

Mr. Gwathmey: Yes, sir (Rec., 550).

Commissioner Lewis: Was Mr. Crane's appearance here as respondent or defendant, was that the investigation case?

Mr. Gwathmey: I can't answer, I don't represent Mr. Crane, however, the N. C. & St. L. Railway is interested in the investigation case, too, of course.

Q. Now, it is inevitable, particularly in the light of some of the things that have been said in the Southeastern Case and various other matters which have come up, including Mr. Crane's testimony, the question of whether this proposed scale of the carriers was to be applied purely as a maximum scale. What have you got to say about that?

Mr. Burke: Mr. Commissioner, our company reserves the right in certain cases to meet competitive conditions, in proposing the scale we proposed it as a maximum scale, but we believe that under competitive conditions we should be permitted to go below the scale provided we don't violate the law in doing so.

By Commissioner Lewis:

We reduced the rate from Chattanooga to Atlanta, I believe, 1919, to meet competition (Rec., 551).

If we put in a maximum scale and the meeting of competition continues, there might be a tendency to bring us to the same conditions that seem to underly this situation and that produced the Thirteenth Section Case, but we believe there might be exceptional cases where it would not, and it is in those exceptional cases we want to have authority to make exceptions if the situation demands it. In other words, where we have say a big gravel pit, and it has got a certain market and other nearby gravel pits can come in on a lower rate and this man's very existence depends [fol. 209] upon his shipping his gravel to this certain market, and if we don't put in a competitive rate to enable him to get in there, it seems that he has to give up his business, we believe in a condition of that kind that we ought to be in a position to give him a competitive rate."

Our position is substantially the same as that of the Southern Railway (Rec., 552).

By Mr. Brooker:

I have not considered the present competitive adjustment as between Graysville and Chattanooga and Birmingham and Montgomery, to Atlanta, because I am trying to defend the reasonableness of the rates; we have had a Section 1 complaint there and that was what my efforts were directed to. I think the rates from those points, including the rates from the Georgia producing points to Atlanta, are substantially on the Georgia scale, and effective August 1, 1925, the rates from all those points were substantially increased (Rec., 553).

By Mr. Price:

The Georgia Commission's scale did not have the effect of reducing the carriers' proposed scale, it is less than the carriers' proposed scale.

Those rates from Chattanooga to those principal market points in Georgia were never on our scale to Atlanta, Rome and Dalton; they were never on our proposed scale; and the Georgia revision increased those rates to those principal markets. I have not particularly studied the Bir-

mingham district but will say that we think and thought and took the position in our answer to the petition that the [fol. 210] adjustment of August 1st gave Chattanooga what it rightfully should have had compared with Montgomery prior thereto, so far as the differential was concerned (Rec., 554).

By Mr. Brooker:

Prior to that time, I think distance and everything considered, Montgomery had an advantage over Chattanooga.

(Witness excused.)

Mr. Gwathmey: To avoid misunderstanding, in view of the position taken by different lines here, I want it understood the Atlantic Coast Line has advocated and now advocates the absolute application of the proposed mileage scale, regardless of whom it hurts or favors (Rec., 555).

Commissioner Lewis: When you speak of absolute in that sense, you mean it shall be both maximum and minimum?

Mr. Gwathmey: Yes, sir, subject to possible minor groupings, as, for example, the grouping Mr. Doss explained to the minimum 15 mile area (Rec., 556).

Mr. Burchmore: I would like to inquire if from Savannah to Atlanta, for instance, intrastate, the 290 mile route of the Southern Railway and Central of Georgia should be allowed to put in a cut rate because there is a 260 mile route between those two points; in other words, can they make a 260 mile rate over a 292 mile route intrastate without violating the technical properties of the mileage scale that they propose? (Rec., 557.)

Mr. Doss: Our position in that case would be that the lowest distance route would make the rate, and the other lines would meet that rate between those two points, but not to intermediate points necessarily (Rec., 558).

(Witness excused.)

[fol. 211] W. R. Hughes was called as a witness and, having been duly sworn, testified as follows:

Commissioner Lewis: Mr. Martin, under which of these proceedings is this witness appearing here?

Mr. Martin: In Docket 17763, the question of the relationship of the rates to apply on crushed stone and the rates to apply on said and gravel are all in issue, and I understand that in all these cases the relationship of these materials is one important issue. Now, we are simply here, this witness is here for the purpose of showing that his material should bear the same relation to the rates on sand and gravel that other broken stone does, he is a shipper of broken stone, and his testimony is just as pertinent here as that of any other shipper of broken stone.

Mr. Walker: Do you ask the Commission to enter an order in this case requiring the carriers to provide or establish the same rates on asphaltic limestone as on crushed rock?

Mr. Martin: Yes, sir, and we will show you why.

Mr. Walker: We have not met that issue, and are not prepared to meet it at this time.

Mr. Martin: The Alabama Public Service Commission says it is broken limestone, and we say it is broken limestone, and we will provie it to you if you will give us a chance.

Exam. Waters: Haven't you got a formal complaint covering all this situation?

Mr. Martin: I have.

Exam. Waters: Won't it be determined in that case?

[fol. 212] Mr. Martin: Perhaps so, but we don't want to be in that case in the position of having our case pre-judged and controlled by this case without any opportunity of putting our situation before the Commission.

Exam. Waters: Isn't this offered by you just merely in order to get your position in this case so that you will not be prejudiced by anything that might be said in this case on account of your formal case that is coming?

Mr. Martin: That is correct, that is our position.

Exam. Waters: Is there any objection?

Mr. Walker: None on our part.

Mr. Martin: We are not asking the Commission to make a specific ruling on it, but we want the Commission to look at our situation when they decide this case.

Mr. Walker: There is no objection to the testimony for that purpose.

Mr. Martin: The witness will have a technical description of this material.

Exam. Waters: All right.

Direct examination (Rec., 564):

By Mr. Martin:

I am a paving contractor, Vice-President and Manager of the Uvalde Paving Company, Dallas, Texas, and have an interest in the production of asphaltic limestone at Margerum, Alabama. I am familiar with the material produced there, which is similar in all respects and in appearance to ordinary blue limestone, containing from nothing to as much as 6½% asphalt. In the quarrying, the leaner ma- [fol. 213] terial is picked out and the richer material shipped for paving material only, not as a pavement. At destination it goes through a grinding and fluxing process, when more bitumen is added to soften that already in the rock and prepare it as a paving material. This is heated in the plant and made much like sheet asphalt or asphaltic concrete (Rec., 565).

It is shipped as broken stone and I know of no other manner by which to ship it. We have made extensive experiments to prepare it as a ready to lay pavement. It is not possible for the ordinary layman to distinguish that product from ordinary limestone without some physical or chemical test. I am not sure that it is shipped as rip rap or ordinary broken stone, but I know it is the producers' intention to ship it as such. It is used for all purposes ordinary broken stone is used for, with the possible exception of agricultural fertilizer. This question was before the Alabama Public Service Commission recently and they found it to be a limestone and prescribed limestone rates, crushed stone rates (Rec., 566).

(Thereupon there was offered and received in evidence, without objection, a copy of the finding of the Alabama Public Service Commission, marked, "Intervenor's Exhibit No. 172, Witness Hughes.")

I call particular attention to page 2, paragraph 3, of that exhibit, which describes the material. We think the rates prescribed are rather high, and desire a lower rate, espe-

cially on the long haul. Since the decision of the Alabama Public Service Commission, the Southern Railway and Mobile & Ohio Systems have given us the same rate on this mileage basis for interstate and intrastrate, over all of those systems, including also I think the Alabama and Vicksburg Railway (Rec., 567).

[fol. 214] I understand this same question is pending before the Interstate Commerce Commission, Docket No. 16031, for there is a tentative examiner's report, which I think is practically the same as the Alabama Commission's finding (Rec., 568).

This same question of rate and classification is also before the Commission in Docket 17805, where the whole adjustment of rates through a very large territory is involved.

Mr. Walker: I just want the record to be clear that it is understood by all parties that this question is not involved in this proceeding, and that this witness's testimony was offered merely to set forth this shipper's contention that he has made in other cases. Am I correct in that, Mr. Examiner?

Mr. Martin: I take this position, that our rates are involved, and seriously involved, if you prescribe a scale of mileage rates that applies from some competing rock crushing plant, and do not make the same rates apply on our material, from our points, we are going to be at a very serious disadvantage (Rec., 569).

Mr. Walter: That is your misfortune, if you wanted to bring that question in issue here, you should have had a complaint set for hearing at this time. We certainly have not had an opportunity to give that matter any consideration, and if you want to raise that question, you will have to raise it, as I understand it, in another proceeding, and our testimony will be offered at that time. We certainly have not offered any testimony on it, and we are not called on to offer any testimony here.

[fol. 215] Mr. Martin: It is limestone, you can't get away from that.

Mr. Walker: If it is limestone, there is no question, but the question of whether or not it is limestone is not involved in any of these proceedings.

Exam. Waters: We are letting this evidence in with the reservation, of course, that we are going to give due con-

sideration to it, as to whether or not it broadens the issues in this case, also having in view the fact that it is involved in another case, and with those reservations, we are letting it in with all the objections that have been made (Rec., 570).

By Mr. Burchmore:

It is not true that the selling price of the material I have described is from $6 to $8 a ton; it is from $2.50 to $3.50 per ton; and the selling price of ordinary crushed limestone, not supposed to contain asphaltum or bitumen, runs from $1.20 to $1.50, I believe. I am not familiar with government reports showing the average selling price of crushed limestone as considerably under $1.00 a ton in almost every state of the U. S. My statement is based on my familiarity with prices around Dallas, Texas, and I have not bought any limestone at any other point in several years; it may be much cheaper than that.

Mr. Burchmore: Mr. Commissioner, may I call attention to the fact that this exhibit No. 172 fulfills the promise made by Mr. Crane that he would file this same exhibit in connection with this exhibit No. 150, which was an extract from this report, so that he I presume is excused from filing it (Rec., 571).

[fol. 216] Mr. Walker: Mr. Commissioner and Mr. Examiner, I think that we are certainly entitled to a ruling of the Commission at this time as to whether or not the rates on this commodity are involved. We did not undertake to meet that issue here, and are not prepared to meet it.

Mr. Brooker: We want to add for the crushed stone producers that we are vitally interested in this question as to whether this material should take the same rates, for this reason, that in order to make the same kind of road as this material will make, it is necessary for the contractors to add asphalt to our crushed stone in order to make the same kind of a road, therefore if you let this material come in on the same basis as crushed stone without giving us a chance to put in evidence in regard to it, we are going to be at a material disadvantage.

Exam. Waters: It is our view that we don't think that we should in this case, at least the issues are not sufficiently broad to permit us to find as an absolute fact what this

commodity, the rate it is entitled to, that fact is involved, that question is involved in another case. Now, this evidence, it has been my understanding, it has been my thought, that it would be permitted to come in just to get Mr. Martin's contention on the record, I don't think the Commission would make an absolute finding of what this commodity, the rate it is entitled to, in view of the fact that it is involved in another formal complaint covering a much broader territory, and where you will no doubt make a much broader showing (Rec. 572).

Mr. Walker: That is satisfactory to us.

Mr. Martin: It is satisfactory to me.

Mr. Burchmore: It is satisfactory to us.

(Witness excused.)

[fol. 217] L. E. Chancellor was called as a witness and, being duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Assistant General Freight Agent of the Central of Georgia Railway, in its Traffic Department for more than 16 years. My company is defendant in the formal complaint putting in issue the rate from Howard, Ga., to Birmingham, concerning which Mr. Brown, a shipper at that point, has testified (Rec. 573).

The only points in the Howard district from which there is a movement of sand to Birmingham are Junction City, Howard and Dry Ridge. Junction City is on the Central and the AB&A. The movement of sand from Howard, Ga., the largest of the three shipping points, has continued for more than 20 years, and I file as my exhibit a statement showing the chronological changes in rates from Howard to Birmingham from July 1, 1906, to date.

(Without objection, the statement was thereupon received in evidence, marked "Defendant's Exhibit No. 173, Witness Chancellor.)

Mr. Chancellor: The only changes made reflect the general advances and reductions. We have maintained

throughout this period a rate to Birmingham, reached by our own rails, the same as from L&N sand pits in the Montgomery District (Rec. 574).

My company thought it necessary to establish this low rate to permit a movement in competition with other sand shipping points located near the Birmingham District, and with the idea that it would furnish loadings for some of the coal cars moving toward the coal mines in the vicinity of Birmingham, which otherwise would be handled empty. [fol. 218] Throughout all these years the movement has been almost altogether in empty coal cars returning to the Alabama coal fields.

I also file a statement showing a comparison of the movement to the Birmingham District with that to all other destinations for the entire year of 1925.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 174, Witness Chancellor.)

This statement discloses that practically the whole movement from that district has been to Birmingham. The Central of Georgia recognizes that the rate is very low and that but for the unusual conditions in handling the traffic, it would be unremunerative (Rec. 575).

Notwithstanding the low character of this rate, in view of the manner in which the sand is handled, we have felt that it afforded some profit above the added cost of doing the business, and as long as this is the case and the resulting rate is no lower than from competing points, it should not be increased until a revision has been made in the rates between points in Alabama, as to do otherwise would in our opinion destroy the investments that have been made at Howard. Testimony has already been submitted respecting the measure of the rates on sand and gravel and other related articles which the carriers proposed for use in the revision of intrastate rates in Georgia and Alabama and interstate rates generally between points in Southern Territory; we believe that the rates under the scale are reasonable rates for this class of traffic, but thinking that it would be impossible to apply rigidly any mileage scale on sand and gravel, and other related articles without in some instances cutting off entirely important movements, and

thereby depriving the communities of the opportunity of disposing of their product.

[fol. 219] Cross-examination.

By Mr. Burchmore:

I don't know the distance from Junction City to Birmingham over the AB&A, but there is not a great difference in the mileage of the two roads (Rec. 576).

Yes, my position is we don't want these rates from Howard and Junction City disturbed until there is a re-adjustment from the competitive territory in Alabama, which is not in review here. In fixing these rates from Howard to Birmingham, we consider the volume of the movement; the rates have been in effect for so many years I could not say how large the movement was; there is a substantial movement, and it is practically confined to Birmingham, so those are the reasons for fixing a low rate (Rec. 577).

One of the considerations in fixing special rates on any commodity, departing from the scale, would be the volume of the movement; it would not be controlling, it would be considered. Our distance to Birmingham is around 190 miles; Montgomery is around 97 miles.

From our producing points the same rate applies today from Montgomery to Birmingham (Rec. 578).

Q. Now, if the authorities in Alabama were to sanction an increase in the charges from Montgomery to Birmingham so as to make them conform to a general mileage rate system and level, do we understand that you are then agreeable to the application of that mileage system from the producing points on your line to Birmingham?

Mr. Burchmore: I object to that question.

Mr. Chancellor: I can't say that we would, Mr. Cotterill (Rec. 579).

Under the special circumstances, and bearing in mind [fol. 220] that Howard slips only to Birmingham, and must meet the competition of Alabama, and that the enterprise depends on that Birmingham market, we feel it necessary to give it special treatment.

We would not feel justified in going below the rate from the Montgomery district, we would not think that would be proper, but so long as we preserve a parity with them, we think there is no hardship imposed upon the Montgomery shipper.

The Montgomery shipper is 90 miles from Birmingham and the distance from out pit to Birmingham is about 190 miles (Rec. 580).

Exam. Waters: I understand this witness believes in a parity of rates between Howard and Birmingham and Montgomery and Birmingham, regardless of the disparity in distance?

Mr. Chancellor: In this particular case, we do.

By Mr. Burchmore:

To a limited extent the Central of Georgia transports between Montgomery and Birmingham but I do not think we haul sand, gravel or crushed stone, and if we did our road would be very much longer than other roads between those points. To my knowledge there are no other shippers or shipping points on the Central of Georgia, shipping to Birmingham, excepting the three named on my Exhibit 174. Our line or the line in which we participate from Montgomery to Birmingham is 155 miles greater than the direct line between those points (Rec. 582).

By Mr. Brooker:

I show that we publish a rate of 79¢ accorded Montgomery shippers over the long haul route from Montgomery to Birmingham.

By Mr. Price:

The pits at Montgomery are in the switching district so [fol. 221] there would be a switching charge to our line, and no switching charge at Howard (Rec. 583).

In addition to this 156 miles, we would have the switching to take care of at Montgomery but would not at Howard. As I testified, I don't know of any movement we have handled from Montgomery to Birmingham. We would be more justified in handling it from Howard to Birmingham than from Montgomery; there, there is a different situation with respect to empty coal cars going back to the mines.

Redirect examination.

By Mr. Gwathmey:

If we participated at all in a movement of traffic from Montgomery to Birmingham, it would be handled via Central of Georgia, through Columbus, and thence to Birmingham (Rec. 584).

Columbus is directly east of Montgomery. This traffic would really move in an eastward direction, almost extent of the total distance from Montgomery to Birmingham. There is no intrastate route over the Central. I doubt seriously if there is such a movement; it would be a very unusual one if there is, and would be routed via Union Springs and Columbus (Rec. 585).

(Witness excused.)

T. T. Masengill was thereupon called as a witness and, having been duly sworn, testified as follows:

By Mr. Gwathmey:

I am Assistant General Freight Agent of the Seaboard Air Line, headquarters at Norfolk, Virginia, and have been in the freight traffic department since 1908, and in my present position since March 1, 1920.

[fol. 222] The importance to the Seaboard of the sand and gravel tonnage involved here is substantial. We serve numerous sand and gravel pits and crushed stone quarries and likewise reach the important Birmingham district in which there is produced an enormous quantity of slag (Rec., 586).

For 1922, the Seaboard carried approximately 1,172,000 tons or 11.1% of the total tonnage carried. For 1923, approximately 2,011,300 tons, or 13.4% of the total tonnage carried. For 1924, 2,463,400 tons, which was 15.9% of the total tonnage carried by Seaboard Air Line. Figures for 1925 are not available.

The most important shipping points are at Petersburg, Va., gravel and sand; at Careysburg, N. C., just east of Weldon, N. C., gravel and sand; at Preston, N. C., approximately 50 miles east of Raleigh, a crushed stone quarry;

at Peedee and Lylesville, N. C., sand and gravel pits, these are located just east of Wadesboro, N. C.; at Mount Holly, N. C., just west of Charlotte, an important sand pit. In South Carolina, the most important production of these commodities are at Columbia, that is crushed stone of all characters and sand (Rec., 587).

In Georgia, we have important stone crushing plants at Oglesby, Ga., near Elberton, and at Ladd's, Ga., approximately 6 miles south of Cartersville. I have already referred to the Birmingham district in respect to slag. In South Georgia, at Everette, just north of the Florida State Line, is an important shipping point of sand. We likewise reach the Montgomery district on sand and gravel, and located approximately 9 miles east of Montgomery, at a point known as Medlin, is an important shipping point of what is known as clay gravel.

There is an enormous tonnage of sand, gravel and crushed stone from points on the Seaboard in North Caro-
[fol. 223] lina. It is a matter of general common knowledge that the state of North Carolina has been engaged for the last five or six years in the most extensive road building project of any state in the entire South (Rec., 588).

My exhibits Nos. 175 and 176 show in somewhat more detail the restrictions used by the North Carolina Commission and the respective orders issued by that Commission affecting rates in North Carolina on these commodities.

(The statements were thereupon received in evidence, marked respectively, "Defendant's Exhibit No. 175, Witness Masengill," and "Defendant's Exhibit No. 176, Witness Masengill.") (Rec., 589.)

I represented the Seaboard at the hearing in Raleigh in November, 1921, which resulted in the Commission's issuance of Circular No. 224, shown on sheet 3 of Exhibit 176. My exhibit No. 177 gives a comparison of the Florida intrastate mileage scale on gravel, slag and crushed stone, with the carriers' proposed single line scale.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 177, Witness Masengill.") (Rec., 590.)

The Seaboard's tariffs publishing those rates carry a reference to the act of the Legislature of Florida authorizing establishment of low rates for state, county and municipal purposes on these commodities, as shown by S. A, L. Tariff I. C. C. A-7148, Page 4-A. It has been the belief among the principal trunk line carriers in Florida that it was mutually advantageous to carriers and citizens of that State to assist in developing the State, and this schedule of rates is the carriers' contribution toward making the delivered cost of road building materials used by state and municipal authorities as low as possible (Rec., 591).

[fol. 224] These rates were established as early as 1911. Whether the carriers I represent believe in a continuance of the lower rates for those purposes, I can't say as my present purpose is to show that they were never established by the railroads (Rec., 592).

I can't give an indication of the carriers' present policies, and speak only for my company that these rates are charged today under the circumstances I have just stated. No intrastate rates in Florida can be advanced without previous authority from the Florida Railroad Commission.

Mr. Gwathmey: Replying a little further to the question you asked a moment ago, Mr. Examiner, I will say that Mr. Doss advises me that the Atlantic Coast Line has several times tried to take out some of those rates, and the Florida Railroad Commission would not let them; that is my understanding of the situation from the Coast Line's standpoint.

Mr. Masengill: Mr. Doss and Mr. Crane have filed statements which show in fairly complete detail all of the important mileage scales applied on the Trunk Lines in the Southern States, and in several of Mr. Doss's Statements he has made reference to the interstate mileage commodity scale on chert, sand and gravel, slag and crushed stone of the Seaboard Air Line. I file as my Exhibit No. 178, a two-page statement, being a chronological statement of the scale, the interstate scale of the Seaboard Air Line, and would like to briefly relate some of the history in connection with the establishment of those rates (Rec., 593).

Exam. Waters: The exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 178, Witness Masengill.)

[fol. 225] Mr. Masengill: Just prior to the hearing before the North Carolina Commission in November, 1921, due to the intensive program of the North Carolina Highway Commission in constructing roads in that state, shippers of crushed stone and sand located at Columbia made requests on our Division traffic officer for a scale of rates from that point to points in North Carolina, due to the fact that we had at that time no interstate mileage scale in effect. The Seaboard published effective August 20th, 1921, for application between points on its line, single line hauls in North Carolina and South Carolina, the schedule which I have shown in this statement under the description 1-A. This scale applied only on gravel, sand except moulding sand, and crushed or rubble stone. The schedule was reduced 10 percent effective July 1st, 1922, under Reduced Rates 1922, and its application was extended to also apply on stone screenings, slag and cheft. The addition of slag to this commodity description was in response to a request from the traffic officers of the Chesapeake & Ohio Railway, who advised that the owners of Virginia furnaces located on their lines in Virginia were seeking a market in the Carolinas within a radius of 250 miles from Norfolk, Richmond and Lynchburg, Va., in order to dispose of a large accumulation of this furnace slag (Rec., 594). This schedule of the Seaboard Air Line was first established to apply on the Virginia slag. In July, 1921, Mr. Ribe, Traffic Manager of the Birmingham Slag Company, and Mr. Linthicum, traffic manager of the Ladd's Lime and Stone Company, wrote our traffic department requesting an extension of the Seaboard Air Line's interstate mileage scale up for distances to and including 600 miles; the original scale was published to include distances of only 400 miles. Both of these gentlemen represented to us that on the one hand they desired to ship slag from [fol. 226] the Birmingham district, and the other crushed stone from Ladd's, Ga., into the Carolinas. These requests were given due consideration, and finally after conferences between the shippers and our traffic officer, the Seaboard published effective September 29th, 1924, the schedule of rates shown in this statement under column

2-D. You will observe from the second sheet that the scale was extended for distances 400 to 700 miles. I should also state that the rate of the schedule from 5 to 400 miles was the same as the interstate mileage scale of the Southern Railway single line which Mr. Crane introduced yesterday, but with respect to the distances in excess of 400 miles, it was the opinion and judgment of our executive traffic officer that the scale was too low, so that one of the considerations entering into the increase in this scale for the longer distances was the fact that it should earn as minimum revenue approximately 4 mills per ton mile at 700 miles (Rec., 595).

At the time this schedule was established, the commodity description was changed to also include chert, sand and gravel, washed or unwashed. The carload minimum was the marked capacity of the car, except where cars were loaded to their physical capacity actual weights would govern. The application of the scale was likewise substantially increased; whereas previously our mileage scale applied only between points in North and South Carolina, this scale for 700 miles was extended to apply to all points on the Seaboard Air Line System, single line hauls, in the states of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, to and including Baldwin, Fla. That reservation takes in what is commonly known as the North Florida Territory on the Jacksonville-River Junction Line.

[fol. 227] Our instructions from our traffic officers were that that scale was predicated on minimum earnings of 4 mills per ton per mile for distances as great as 700 miles. My exhibit No. 178 compares that scale with the carriers' present and proposed scales (Rec., 596).

I have previously referred to the fact that the Chesapeake & Ohio Railway officials desired a scale which will enable their shipments to reach the Carolinas. I file as my Exhibit No. 179 a comparison of the Seaboard Air Line's single line scale with the Chesapeake & Ohio Railway's scale applicable from furnace points located on that line in Virginia to stations on its line in Virginia.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 179, Witness Masengill.")

In order to meet the wishes of the presiding Commissioner, I have eliminated all duplicate figures of the Seaboard Air Line making comparison of the rates both specific and mileage from Birmingham and from Montgomery, which have been fully covered by the statements filed by Mr. Doss. I do wish to file as Exhibit No. 180 a statement showing the rates on slag from Birmingham to points in Georgia, compared with the rates on slag and gravel from Lylesville, N. C. to important points in South Carolina and Georgia, and at the bottom of the statement a comparison of the single and joint line rates on slag from Birmingham to South Georgia points, as compared with the rates on slag from Birmingham to points in Alabama (Rec., 597).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 180, Witness Masengill.")

Mr. Masengill: In Exhibit No. 181 I show a comparison of the number of carloads and average weight of clay [fol. 228] gravel, sand and stone loaded at points on the Seaboard Air Line for the months June to November inclusive for the years 1922 to 1925 inclusive.

Exam. Waters: The exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 181, Witness Masengill.")

Cross-examination.

By Mr. Brooker:

In establishing rates on crushed stone it is generally the policy to make the rates apply on broken stone and stone screenings (Rec., 598).

I am unable to compare the production of sand and gravel in North Carolina with that of Alabama, but I do know there is an enormous production of those commodities, and also crushed stone, in North Carolina on the Seaboard, and I think also on the Coast Line and Southern. My information is not authentic enough to make any statement respecting the movement from Alabama points.

By Mr. Burchmore:

The rate of $1.30 from Birmingham to Atlanta or a distance of 166 miles, shown by Exhibit No. 180, and that under

my scale the rate would be $1.40, is for the route of the Seaboard Air Line (Rec., 599).

I think there is a route of the L. & N. from Birmingham to Atlanta in connection with another road, at least it is available. The mileage by L. & N. in connection with the Western Railway of Alabama is 272 miles from Birmingham to Atlanta. If the L. & N. elected to handle that traffic from Birmingham to Atlanta over that route, as explained by Messrs. Doss, Crane and Chancellor, it is a competitive [fol. 229] situation that they might meet; that is, it would be allowed to take the short line route of the Seaboard of 166 miles, which means that although 272 miles under our proposed scale would make a rate of $1.67, still the carriers will be charged only $1.40 because that scale rate applies for the short line distance (Rec., 600).

I don't know that the L. & N. in connection with the Western of Alabama does haul considerable tonnage between those points under the $1.30 rate, that is, these commodities, including slag, but it is one of their available routes, and I think is used. Assuming that your figures, which you have taken from Exhibit No. 8 of 193 miles from Johnson City to Birmingham over the Central of Georgia, which charges less than the full scale rate, or $1.44 for that distance, to meet the competition of the short line rate of $1.08 for 97 miles from Montgomery to Birmingham, I think the situation you mention between Atlanta and Birmingham as between the shipper on the one hand and the L. & N. and Western of Alabama on the other, is a competitive situation, our line, as well as the other two lines, making up the longer road, should be permitted to meet (Rec., 601).

Respecting the situation of the Central of Georgia at Howard as compared with the Montgomery district to Birmingham, it is my opinion that that is a similar situation the traffic officials of lines involved should be permitted to meet in their best judgment provided a situation is not created that would violate the law contemplated under Section 3. Obviously, Mr. Burchmore, if a long route does not meet the rate of the short route on highly competitive traffic, it won't handle any of the traffic. It is equally obvious if the Central of Georgia's rate from Junction City to Bir- [fol. 230] mingham is 32¢ higher than the rate in effect from Montgomery to Birmingham and there is no leeway

given for the operation or application of those rates that there would not be any movement from Howard (Rec., 602).

I can think of nothing that would permit the road to get the business under such a difference in rates because there is a competitive situation at Birmingham that must be met by both carriers and producers. Of course it is true that there are some places on some traffic where terminal deliveries are furnished that a road can get a higher charge than a competing road without such terminals. I could express an opinion respecting the terminal deliveries at Atlanta that would affect these competitive situations but I would not want to do so with respect to the Central of Georgia situation that obtains in Atlanta.

By Mr. Watkins:

Q. Mr. Mascngill, in your Exhibit No. 176, Sheets 1, 2 and 3, these rates there generally apply except where other specific rates are approved by the Commission, do you have municipal rates in North Carolina?

A. On unwashed gravel, Mr. Watkins, as was explained by Mr. Doss on yesterday, which has a very limited application. Now, at the time of this hearing in November, 1921, the carriers in North Carolina had several rates which were less than their scale, and there was objection voiced, as is shown in the report and order of the North Carolina Commission, which was also filed by Mr. Doss (Rec., 603).

Q. I am merely asking you for the fact, not the argument, it is the fact that there remains in North Carolina rates now less than the scales that you have set up in this exhibit?

A. So far as our company is concerned, I don't know of but three applications.

[fol. 231] It is our position that there should be one level of rates on all these road building commodities. I think the principal intrastate movement of commodities here involved, so far as our line is concerned, is on crushed stone in the northern section of Georgia and sand in the southern section (Rec., 604).

I cannot say whether our revenue was increased or decreased as a result of the Georgia intrastate revision, hav-

ing no figures, I make no claim that the operation of the Georgia revision diminished our revenue within Georgia upon intrastate movements. I expressed my opinion that it was wrong (Rec., 605).

Q. Now, in the determination of the carriers as to the elements properly, according to their view, entering into the measurement of their so-called proposed scale here, was thought given as to the elimination of the so-called municipal rates in various states where they exist?

A. Mr. Cotterill, I think the answer that Mr. Doss gave to you to substantially the same question is the best answer that I could give.

Q. Well, his answer, if I correctly recall it, was that so far as concerned his line, no thought was given to the question.

A. Well, I think that was what largely influenced traffic managers of the other trunk lines in Georgia. We were called upon, as I recall it, in response to citations from both the State Commissions of Georgia and Alabama to submit a schedule of rates, to revise the entire rate structure in both of the states, on classes as well as commodities, and this group of rates was submitted by the carriers' committee to the Georgia Commission under what is known as their Commodity Group No. 9. Now, I don't think that in [fol. 232] preparing these 40 or 50 commodity scales, as well as the class scales, that they gave to this proposed scale here the minute examination that your question would infer as did here; in other words, there was such a mass of it that this represents their best judgment as to what a reasonable maximum scale on these commodities would be both in the states of Georgia and Alabama, it has likewise been submitted to the North Carolina Commission and to the South Carolina Commission.

I have no knowledge that such scale would or would not be applied as a substitute for lower rates in the southern states for municipal application in determining our best judgment.

Q. Well, if that never was taken into account in the formulation of your scale, are you in a position to say whether the scale now proposed by the carriers is to be taken as a substitute for such municipal scales intrastate or not, so that we may determine for ourselves and that the Commis-

sion may determine its reasonableness in the light of that circumstance?

A. Well, your question is based on an assumption, I have expressed the opinion that I was not in a position to properly give you the reasons why the traffic officers members of this Committee submitted these figures (Rec., 607).

I am not in a position to state what the Seaboard proposed to do as to the municipal rates. I think that the 140% increase in tonnage of these products originating on our line from 1922 to 1925 is attributable to the intensive highway construction in substantially all of the five principal southern states (Rec., 608).

I believe it is a fact that the present basis of rates on the present Georgia scale are applied as minimum rates between points in Georgia and that the scale now proposed to the Commission in the Thirteenth Section Case is a max-
[fol. 233] imum scale, so far as the Seaboard is concerned. I don't know that the municipal rates authorized by the Florida legislature were permissive or mandatory, but think it was permissive; I think I stated that in years gone by the carriers deemed it to their interest to help build up that state. We don't have municipal rates in Georgia (Rec., 609).

I understand they are prescribed by the Georgia Commission as reasonable maximum rates. As to the tonnage from Ladd's to Atlanta, I don't have my figures, except only the loading at Ladd's for October, which was 99 cars, with an average loading of 99,560 pounds,—close to 50 tons. The rate from Ladd's to Atlanta was increased under the Georgia revision from 68¢ to 90¢, or approximately $10 to $12 a car increase at that loading. Whatever movement there is from Oglesby to Atlanta is from an operation there by the Georgia Highway Commission, but it would not have any effect on rates as they would be charged the same as the people at Ladd's (Rec., 610).

Whatever movement there is at Oglesby, we get it being local to our line. The market for the sand at Everett was Jacksonville, Florida, according to October loadings; there was none to Savannah. We handle a considerable tonnage of slag from Birmingham to Atlanta and the rate was increased under the Georgia revision of August 1, 1925, from $1.02 to $1.30 (Rec., 611).

I can't say whether that covers the effect of the Georgia revision as to increasing or decreasing our revenues for I have no information regarding revenue results. There has been an increase in revenue because we are operating this scale as a minimum scale today so far as I know. You understand I am talking about intrastate business in Georgia (Rec., 612).

[fol. 234] As I have said, there have been three departures from North Carolina scale in North Carolina, but we have not yet been allowed to go up to the scale due to the substitute compromise, as I understand it. Under those three exceptions, there is a spasmodic movement from Lylesville to Charlotte, only where the gravel produced within trucking distance of Charlotte cannot supply the demand; and from points on a line that is in the hands of receivers at this time, the North Carolina Commission maintains a rate made effective during Federal control, which is now substantially the same as the Trunk Line single line scale applied over that line and the Seaboard; and also in one other instance, from Creston to Durham, N. C., on crushed stone, where the contractor has warrant for sewerage and water works (Rec. 613).

I don't know, and have not heard, that there has been a decrease in the movement of slag from Birmingham to Atlanta by reason of the increased rates effective August 1st.

Redirect examination.

By Mr. Gwathmey:

The rates in effect prior to April 1, 1925, were the intrastate rates fixed by the Georgia Public Service Commission in 1915, and we hauled lots of traffic under them between the Elberton district to Atlanta, and Ladd's to Atlanta (Rec., 614).

The quarries as Oglesby were opened since then.

Yes, I have been with the Seaboard since 1902.

(Witness excused.)

[fol. 235] Roy Pope was thereupon called as a witness and, having been first duly sworn, testified as follows:

My name is Roy Pope, Assistant General Freight Agent of the Atlanta, Birmingham & Atlantic Railway, B. L.

Bugg, Receiver, headquarters, Atlanta, Ga. I have been in the employ of the A. B. & A. Railway since 1916, prior to June, 1920, I served in various capacities from executive rate clerk, chief rate clerk and chief clerk, and since June, 1920, I have been Assistant General Freight Agent in charge of rate adjustments on that line. I am fairly familiar with the rates on sand and other commodities involved in these proceedings as they apply on our line.

Mr. Commissioner, and Mr. Examiner, pursuant to the plan of shortened procedure, I will endeavor to follow that, although it may be necessary for me to make a general statement leading up to the presentation of my evidence. I may say that my evidence and testimony will be addressed principally to the issue involved in Docket No. 17689, covering the reasonableness of the rate of 79 cents per ton on sand from Junction City District to Birmingham, Ala.

I wish to present subject to such objections as may be interposed, if any, at this time Exhibits 182 to 196 inclusive.

Exam. Waters: The exhibits will be received and made a part of the record, unless there is objection.

The first exhibit is a map. I may explain that I did not make the same distribution of this map as I have of the exhibits, it is simply a map of the Southeast, and most of the railroads have the advantage of similar maps, and I judge also the parties interested in these proceedings.

(The map was thereupon received in evidence, marked "Defendant's Exhibit No. 182, Witness Pope.")

[fol. 236] It will be observed from the map, which shows the geographical location of the A. B. & A. Railway, that we are primarily an east and west line, having terminal points at Atlanta and Birmingham on the west end, and Brunswick and Thomasville on the east end. I wish to explain briefly the nature of our traffic and operating conditions in connection therewith. Our traffic eastbound from Atlanta and north consists primarily of merchandise, packing house products, grain and grain products, manufactured products and various other commodities that move largely in closed equipment. Our traffic from points west of Birmingham is of a similar nature, but the preponderant movement is through the Atlanta gateway. Our traffic from

Birmingham is by the very nature of the production of commodities in that district, largely of a character that move in open top equipment, such as for example, coal, one of our principal commodities moving in open top equipment, pig iron, iron and steel rails, cast iron pipe and structural iron of various kinds. Our traffic from Atlanta proper is largely of a character moving in closed equipment. Our traffic from the South Georgia territory consists principally of lumber, peanuts, fruits and vegetables, naval stores, and cotton factory products and cotton, most of which requires closed equipment in transportation. Our cotton traffic moves principally to the Carolina Territory and to the ports, South Atlantic Ports and east, and that that moves to the Carolina territory moves via Atlanta rather than via Birmingham. The principal movement of our lumber is eastward through Atlanta.

I mention this, Mr. Commissioner and Mr. Examiner, to show what I am leading up to, that the transportation obtaining in connection with the movement of traffic to Birmingham, which includes sand from the Junction City District, is of little consequence in open top equipment; there [fol. 237] is some movement of traffic to Birmingham and through Birmingham westward in closed equipment (Rec., 617).

Therefore, as we have a preponderant movement eastbound from Birmingham to the South Georgia Territory and Florida of traffic that is suitable for transportation in open top equipment, we necessarily have a return movement of open top equipment to Birmingham and Birmingham District points, which does not obtain as to the movement of empty returned equipment to Atlanta and Through Atlanta.

As illustrating this feature further, I wish to refer to my Exhibit No. 183, which shows the total number of trains operated during the month of July, 1925, and the month of January, 1926, to Birmingham and from Birmingham.

(The statement was thereupon received in evidence, Marked "Defendant's Exhibit No. 183, Witness Pope.")

It will be observed that we had a total number of trains to Birmingham shown under the column "Received," of 92, with a total number of loaded cars of 560, an average

of 6 loaded cars per train to Birmingham. I may explain here that our operating department advises me that our trains to Birmingham generally run as many as twenty or more cars per train, so it will be observed that most of the cars in such trains to Birmingham are empty, and as I have explained, they consist primarily of the open top equipment, including returned coal equipment (Rec., 618).

It will be noted from the same statement that during the same period, July, 1925, we had 92 trains from Birmingham, containing 1,357 cars, or 15 cars per train. And the exhibit is self-explanatory as to January, it rather indicates that the two months are representative of the situation which the exhibit purports to show.

[fol. 238] Yes, sir, it is limited freight trains, and I might explain there that it is necessary in order to take care of the per tonnage eastbound from Birmingham and district and from points beyond Birmingham, for us to move power and crews to Birmingham, we must get the power there and the crews there in order to take care of the traffic offering eastbound, which as shown by this statement, consists more of loaded equipment than empty, the reverse of the situation westbound. We operate two schedule trains a day, through trains to Birmingham and from Birmingham, so it is necessary that this train operate in both directions.

As further illustrating the dissimilarity between the operating situation obtaining in connection with the movement of traffic to Birmingham through Birmingham and from Birmingham and beyond, I refer to my exhibit No. 184, which shows similar information as to trains operated to and from Atlanta for the same months. It is only proper to explain in connection with the July movement of 1925, that the great disparity between the received and forwarded for that month as compared with January, 1926, is attributable to the fact that during July we have a large movement of peaches and watermelons; so that January is more representative, and indicates a substantial, in fact an exact parity as to the number of trains operated out of Atlanta, the number of cars per train, and the number of trains operated to Atlanta and the number of cars per train.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 184, Witness Pope.")

My Exhibit No. 185 shows the present rate on sand from Greenfield, Ga. and Junction City, Ga., which are the two principal shipping points on our line, to Birmingham, Bes-
[fol. 239] semer and Woodward, and the revenue per car mile based upon 50 tons per car, contrasted with the average revenue per car mile on all freight traffic handled by the A. B. & A. Railway during the calendar year of 1924.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 185, Witness Pope.")

This exhibit shows clearly I think that the A. B. & A. Railway's handling of sand from those two points to Birmingham, Bessemer and Woodward on the basis of a rate of 79 and 80 cents, as shown, does not necessarily throw a burden upon other traffic (Rec., 620).

I will later show that it contributes to relieving the burden on other traffic. It should be explained, Mr. Commissioner, and Mr. Examiner, that from Junction City our distance to Birmingham is 223 miles, and the distance via the Central of Georgia is 197 I believe, our distance being greater, we have Fourth Section relief to meet their rates under the theory of circuity, on the theory of circuity, under Fourth Section Order No. 3700, at Junction City, at Greenfield we carry a rate of 80 cents, which we are permitted to do, and the reason for carrying 80 cents is to not have a rate to a point beyond the border of the Georgia State Line lower than to the first point at the border, Abbottsford, Ga., to which point the rate under the Georgia Commission's order is 80 cents. Likewise we are permitted to carry the 80 cents from Junction City and Greenfield to Bessemer and Woodward, which points the Central of Georgia does not reach.

We observe the same rate to all of the intermediate points including Talledega, between Birmingham and the Georgia State line, Abbotsford, Ga., is 80¢, and that rate is carried all the way through to the terminal at Birmingham, including all intermediate points (Rec., 621).

[fol. 240] My exhibit No. 186 shows the traffic density comparisons of the A. B. & A. and other trunk lines serving the same southern territory, from which it will be ob-

served our traffic density is much less than that of the other trunk lines in our territory.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 186, Witness Pope.")

I may explain further that that is occasioned by the fact that we are a comparatively new line, perhaps you have discovered that in your investigations in connection with valuation, and the local territory has not developed agriculturally and industrially to the same degree as naturally may obtain on the older lines, so our traffic density reflects that condition, and what we need more than anything else is more traffic, more revenue traffic.

In this connection, my Exhibit No. 187 shows that if the shippers of sand at Junction City and Greenfield and that district on the A. B. & A. Railway should be excluded from the Birmingham market by the establishment of a differential adjustment of rates or higher rates from those points than from Montgomery, what it would mean to the A. B. & A. Railway in loss of revenue.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 187, Witness Pope") (Rec. 622).

I show here the approximate number of cars shipped per year as a thousand, that is closely correct, and I have shown the tonnage at 50 tons per car, I have shown that the loss to our line on the basis of the 79 cents rate applied to that tonnage would be $39,500.00 per year, and if we should assume that the rate from Montgomery to Birmingham should be revised to the scale, proposed in this proceeding by the carriers, which would result in a rate of $1.08, and then assuming we should continue the parity from Junction City [fol. 241] with Montgomery on the $1.08 basis, our loss on that proposition would be $54,000.00 per year.

I have said that if by virtue of this proceeding or later, the rate from Montgomery to Birmingham should be readjusted and made $1.08 to reflect the carriers' proposed scale, and then assuming that we should continue the parity between Junction City and Greenfield on the one hand with Montgomery on the other to Birmingham, and therefore have a rate of $1.08, our loss on that business would be

$54,000.00 per year, if we were not permitted to meet the $1.08 rate; assuming that the rate from Junction City should be made higher than from Montgomery, and thereby preclude the Junction City shippers from entering the Birmingham market.

My Exhibit No. 188 contains excerpts from decisions of the Interstate Commerce Commission, regarding the economical transportation of a given commodity and the traffic needs of the carrier, in justification of low rates (Rec. 623).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 188, Witness Pope.")

I have shown by previous statements that our traffic density is low, and that we need more traffic, revenue paying traffic, and this exhibit, the purpose of it is to show that the Commission has sustained in principle the propriety of a carrier making a lower rate where empty cars are utilized; it also shows that where by handling the traffic on a low competitive rate if the carrier handling can derive something above the cost, that it may properly do so, and that it may contribute to relieving the burden on other traffic, rather than in increasing the burden.

My Exhibit No. 189 is submitted in connection with the testimony of Mr. Brown at Junction City and Mr. Moore [fol. 242] at Junction City, shippers of sand, who testified that they had substantial investments in their property and the facility for operating their sand pits, and that their investments were made at a time when a parity of rates existed between the rates from the Junction City district to Birmingham with the rates from Montgomery to the Birmingham district.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 189, Witness Pope") (Rec. 624).

This exhibit shows the expressions of the Commission sustaining the propriety of the consideration of such expenses as one factor at least in arriving at a conclusion in a proceeding of this kind.

My Exhibit No. 190 is submitted to indicate that the A. B. & A. Railway is efficiently managed

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 190, Witness Pope.")

It shows that our train mile cost is comparable and even less than that of the other lines in the same territory. This gets us back again to the point of traffic density. While our train mile costs may be the same as or lower than the other lines, our failure to have traffic density and tonnage to fill out those trains results in a difficult operation when it comes to the final result in the way of traffic income.

This is illustrated by my Exhibit No. 191, which shows our operating results and income for the years 1921 to 1924 inclusive. It is self-explanatory.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 191, Witness Pope.") (Rec. 625).

[fol. 243] I do wish to call particular attention to the 1924 figure there, showing that we have a remainder of $45,669.00 after paying operating expenses and the other deductions shown, which are according to the Classification of reports required by your Commission and submitted to you, whereas if we should be cut out of the movement of sand, as illustrated by my Exhibit No. 187, our loss on the 79 cents rate basis would be $39,500.00, and on the $1.08 rate basis, $54,000.00; in other words, the result there would be, if applied to the year 1924, to wipe out the remainder there left to pay towards the interest on the funded debt of the company.

Commissioner Lewis: Well, now, in the valuation decision, we held that the government was not underwriting any unprofitable or improvident investments; now, to take that very theory in this case, is the whole adjustment of rates in this territory to be hinged on this financial showing of a road which does not seem to be in very affluent circumstances.

Mr. Pope: Is that a question?

Commissioner Lewis: That would lead to a conclusion, I don't know.

Mr. Pope: I would like to answer it any way, if I may; to the best of my ability. We are not seeking here special consideration based solely upon our financial condition. As

to the question of the propriety of our existence, I think that has been shown, that we do perform a needed transportation service in a territory that is dependent solely upon us for transportation (Rec. 626), and it is in the public interest that we not be deprived of traffic on which we devire a revenue somewhat in excess of cost, and which may be handled at a very economical transportation cost, [fol. 244] as I have illustrated that we can and do handle sand from Junction City to Birmingham. The point is that my submission of these statements as to our financial operation goes to the propriety of our continuing to earn a part of our living from this traffic that moves from Junction City to Birmingham at a very economical cost, and as my exhibits illustrate, we must get the cars over there, if we move them empty there is no very great difference between the loaded movement and the empty movement, and I wish to say there that does not move in trainload lots or necessitate special train service, but the movement has for years been in small lots of from two to three and may be five cars aday, it is not loaded at points of a congested terminal, and it can be switched into our trains at point of origin at an economical cost, and delivery made at Birmingham, Bessemer and Woodard at an economical cost, and if I may use the expression, it is almost all velvet to the A. B. & A. Railway.

My Exhibit No. 192 is submitted to show that it is not an exceptional situation for us to be permitted to carry the parity of rates from Junction City to Birmingham with the rates from Montgomery, notwithstanding the difference in distance (Rec. 627).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 192, Witness Pope.")

It shows as to sand that the rates to Birmingham, the rate of 79 cents applies for distances from 97 up to 223 miles, and I might say that the distance from Greenfield is 225 miles, and that from LaGrange, Tenn., a distance of 236 miles, the rate is only 90 cents.

Now, I have shown on the same statement the present rates on pig iron to Atlanta, and I do not submit this as in any way suggesting that there should be any relationship whatever between the rates on pig iron on the one hand

and sand on the other, or as to the relationship between the rates on sand and coal, but it is to illustrate the point that [fol. 245] mileage does not always control on such commodities. It will be observed that the same rate applies on pig iron for a distance of 222 miles as for 102 miles. It will be observed that the same rate on coal to Atlanta applies for a distance of 288 miles as for 215 miles.

I now come to the question of what might be considered a correct relationship between the rates on sand from Junction City District to the Birmingham district, with the Montgomery District to Birmingham, and I submit Exhibit No. 193, which is an order of the Alabama Public Service Commission, showing that it was made as approving the compromise agreement made between the carriers' and the shippers' representatives.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 193, Witness Pope.")

Exhibit No. 194 shows that in a way the compromise adjustment contemplated, which specifically shows that the rate of 79 cents from the Junction City District to Birmingham was to be subject to the same absorption rule as continued on a parity with the Montgomery rate to Birmingham.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 194, Witness Pope.")

Exhibit No. 195 shows the occasion of the carriers feeling that a rehearing was proper, and that the first decision of the Commission suggesting or prescribing the rate of 60 cents from the Montgomery district to Birmingham was not proper.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 195, Witness Pope.")

Exhibit No. 196 shows the first decision of the Commission in the case referred to, in which they prescribed a rate of 60 cents, and as indicated, on rehearing withdrew the order.

[fol. 246] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 196, Witness Pope") (Rec., 629).

I submit those exhibits, not to indicate in any way that there was an agreement as to the measure of the rate or as to the reasonableness of the rate of 79 cents from Montgomery nor from the Junction City District, but rather to show, as it does, that there was a relationship recognized at that time between the two groups of shipping territory to a given destination market of the Birmingham District. I might say in conclusion that while my testimony is addressed to the situation in Docket No. 17689, I concur in the mileage scale as a maximum submitted by the Witness Doss for general application in the Southern Territory.

Cross-examination.

By Mr. Price:

We don't wish the rates from Johnson City to Birmingham disturbed until there is some revision made in Alabama; we would prefer, however, to see the rate from Montgomery to Birmingham made $1.08 (Rec., 630).

I do not understand that the Alabama intrastate rates are involved in this proceeding. I am fairly familiar with the revision which the Georgia Commission has had under way since the fall of 1921. I understood the Georgia Commission's order in the sand and gravel case was a part of that general revision, and that prior to its order the Georgia Commission made revision of class rates effective May 1, 1923, and since then has issued orders making revisions on many of the commodities (Rec., 631).

I have not made a complete analysis as to the effect of these revisions upon the earnings of the A. B. & A., but I know it did effect an increase in our revenue on sand [fol. 247] from the Junction City District to Atlanta, and we have a fairly substantial movement to Atlanta and points in the switching limits. I do not recall at the moment whether the result of the cotton seed adjustment increased or reduced our revenue in the aggregate. As I recall it, the scale proposed by the Georgia Commission on cotton seed was substantially the same as that proposed by the carriers.

I may further say that while the effect of your order on sand did increase our revenue to Atlanta and points in the switching limits, it effected reductions in the rates on sand

from Junction City to points north of Atlanta, at Tate, Ga., and Canton, to which points there has been some movement, although not in the same volume as to Atlanta. It also effected reductions in our rates from the Junction City District to the South Georgia Territory, the effect of it there is small, there is not a large movement of sand from Junction City to the South Georgia territory, so in revenue effect it was not much different (Rec., 632).

Based upon the preponderant tonnage to Atlanta, I should say that the total revenue affected resulted in an increase, but I may say that if your questions have to do with the Thirteenth Section proceedings here involved, that we did not subscribe to the first petition, or the petition filed by one of the other carriers, feeling that if was a little premature because we had not accomplished the revision contemplated and desired of our interstate rates; and I may refer here to the fact that the rates from Birmingham for example, to South Georgia territory on slag are on a higher basis than your scale would produce for the same distance, similarly the rates on gravel, and I judge to the extent that there may be a movement from the Montgomery District to the South Georgia Territory, they are on a higher level than your scale would produce, and similarly the rates on gravel and sand from Chattanooga to points in Georgia are on a higher level than [fol. 248] your scale would produce, and crushed stone or slate from points north of Atlanta on the Louisville & Nashville Railroad to South Georgia I believe are on a higher level than your scale would produce. The effect of your order as applied to such adjustments would, it seems to me, involve the Thirteenth Section (Rec., 633).

The A. B. & A. is a party to these competitive rates from Birmingham to Atlanta. I think the rate was increased; I don't know to what extent, but am willing to accept the statements already made on the record.

I cannot say whether the effect of the Georgia order increased any of the rates interstate in which the A. B. & A. was involved. To some extent there is a movement of coal to destinations on the A. B. & A. to mines other than those in Alabama, coal from Kentucky and Tennessee points being received by us at Atlanta. We return those coal cars empty as far as Atlanta unless we have tonnage that can be loaded in them (Rec., 634).

In some markets, sand is a tonnage suitable for loading in empty coal cars, but in others it is different; for example, my understanding is that sand when used for fertilizer filler, and there are a number of fertilizer plants at Atlanta, requires closed equipment, whereas to Birmingham the movement is not incident to the fertilizers received. To some extent we do transport sand produced on our line to Atlanta in empty coal cars. But let me say here that the preponderant movement of coal to destinations on our line, commercial coal aside from the fuel coal, is from the Alabama mines, in the first place as a general proposition the rates on coal from the Alabama mines to the South Georgia Territory are lower than from Ken-[fol. 249] tucky and Tennessee, and in the second place, we get all of our fuel coal from the Alabama mines, and we actually release daily as many as ten cars handling fuel coal from the Alabama mines to our coal chute points, such as Manchester, Oglethorpe, Westwood in the Fitzgerald District, and a slight movement to Brunswick, and the movement of commercial coal, even as contrasted with commercial coal from Kentucky and Tennessee with the movement from the Alabama mines to our territory, it is much less in proportion. We do not have the same degree of empty return of coal equipment to and through Atlanta as we do to and through Birmingham (Rec., 635).

To an extent there is a movement of returned empty coal cars from destinations on the A. B. & A. back to Atlanta in the direction of the mines from which those cars come. I might explain further there that those coal cars are not our own equipment and the sand moving to the Atlanta territory as a general proposition requires delivery not on our rails, which is different from the situation at Birmingham as a general rule, and naturally we want to get the coal cars, the few we move, returned by Atlanta as quickly to our connecting line as we can.

Our present charge from the producing points on our line in Georgia to Atlanta is 90 cents and to Birmingham 79 cents. The distance from Junction City to Atlanta is 104 miles (Rec., 636).

Those two movements on our line, one to Atlanta and the other to Birmingham, are under entirely different transportation circumstances, as I have already attempted to explain. Of my own knowledge, I do not know that the

L. & N. is a coal originating carrier in the Birmingham District, but from general observation believe it is. I [fol. 250] believe the L. & N. transports coal from the Birmingham district over its own line and southward from and to Montgomery into Southwest Alabama and into New Orleans. I believe the L. & N. has empty coal cars which have to be brought back over that same line through Montgomery to the Birmingham district (Rec., 637).

But I should say that we should not lose sight of the fact that the sand movement from Montgomery moves, according to the testimony of Mr. Roquemore, at the rate of 50 cars a day, I don't presume to know what the operating conditions are on the Louisville & Nashville Railroad, but I doubt if they have a supply of empty equipment adequate to take care of that movement of 50 cars of sand a day for one shipper, I don't know how many other cars are shipped by other shippers from the same general territory by their empty returned coal equipment; moreover, I don't know that they could utilize entirely their coal equipment in the movement of sand, and take it away from the movement of coal from their mines to destinations; in other words, I don't know, but it seems to me that they would have a considerable displacement of their coal equipment to adequately serve their coal mines if they should undertake to supply these coal cars returning for the movement of sand in every case.

I would not say that every car in which we transport sand from producing points on the A. B. & A. to Birmingham is an open car but I do say that the movement of empty cars to the Birmingham Territory is principally open equipment, being incident to the outbound movement of coal and the other products of the Birmingham District (Rec., 638).

[fol. 251] I testified that we wanted to continue a parity between the rates from the Junction City District to Birmingham and the rates from the Montgomery-Jackson's Lake District to Birmingham, because the circumstances warrant it. Prior to August 1, 1925, our rate from Junction City to Atlanta was 57¢, and at that time increased to 90¢ per ton.

Prior to August 1, the rate from Junction City to Atlanta, as compared with Junction City to Birmingham, was more on a parity one with the other, considering the

difference in mileage. It is 97 miles from Montgomery to Birmingham via the L. & N., the short line, for which they have a rate of 79¢ (Rec., 639).

Without the tariff before me, I can't say whether that 79¢ rate applies over routes other than L. & N. from Montgomery to Birmingham, but I do understand there are other routes available, for example, the Western Railway of Alabama to Selma and the Southern thence to Birmingham, and perhaps the Western Railway of Alabama to Opelika and the Central of Georgia to Birmingham. I don't know whether traffic so moves via those routes. I should be surprised to find that this 79 cent rate from Montgomery to Birmingham applies in connection with the A. B. & A. to Birmingham; I don't think it does; I know we would not want to handle any of the traffic.

(Witness excused (Rec., 640)).

F. G. Browder, Jr., was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Assistant General Freight Agent of the Atlanta and West Point Railroad, the Western Railway of Alabama and the Georgia Railroad, first going with the At-
[fol. 252] lanta and West Point in 1902. The Western of Alabama and the Atlanta and West Point constitute the direct short route between Montgomery and Atlanta, the Western Railway extending to West Point, and the Atlanta and West Point thence to Atlanta, West Point being 88 miles from Montgomery. The shipment of sand and gravel constitutes an important tonnage to our line as illustrated by my Exhibit No. 197.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 197, Witness Browder") (Rec., 641).

Referring to this exhibit, it will be seen that it shows the traffic of all kinds originating in carloads on the Western Railway of Alabama and received by connections, and

also the L. C. L. traffic originated on that line and received by connections, these items being totalled. It shows also specifically the number of cars and the number of tons of gravel and sand and kindred articles originating with the Western Railway of Alabama, and the same for that which is received by connections.

It shows that in 1920, 38.2 per cent of all carload traffic originating on the Western Railway of Alabama consisted of sand, gravel, clay, stone, etc., that in 1921 about an equal proportion; in 1922, the proportion was 46.2 per cent of the total tonnage; in 1923 it was 64 per cent; in 1924 it was 71 per cent, nearly 71½; in 1925 it dropped back to 70.19 per cent.

70 per cent of the traffic originating on the line of the Western Railway of Alabama is composed of sand and gravel and similar commodities that are here involved, principally sand and gravel (Rec., 642).

[fol. 253] The interstate and intrastate rates on our lines on these commodities were revised in 1925, the interstate becoming effective August 1, and the intrastate effective April 1. That was for the Atlanta and West Point Railroad. When the rates for our line from Alabama into Georgia interstate were revised they were placed upon the single line mileage scale which we are proposing in this case.

As to the effect upon the tonnage handled by our lines by those rate changes, I may say that a summary of the movement of sand and gravel from the shipping points on the Western Railway of Alabama for the period January 1st, 1925, to November 30th, 1925, shows that for the first six months, the period January 1st to July 31st, increased, the period during which the low rates were in effect, we moved from Arrowhead, Ala., a station 12 miles east of Montgomery, approximately 64,000 tons to destinations in Georgia; while during the period of 5 months following that, which began with the day on which the advanced rates took effect, namely August 1st, there were forwarded from the same point to destinations in Georgia only 5580 odd tons. During the first period of six months, the movement exceeded the second period of five months by approximately 58,400 tons.

During the first six months period, the intrastate rates between points in Georgia changed, they were fixed to be

the same as this order by the Georgia Commission effective April 1st; and from April 1st until July 31st, the Georgia rates were on the basis fixed by the Interstate Commission, and they continued to be on that basis during the second or five months period. A comparison of the movement of tonnage in these commodities from Montgomery, Ala., for the same period shows that for the first six months, dur-
[fol. 254] ing the existence of the low rates on these commodities from Montgomery to Georgia destinations we handled approximately 113,800 tons, while for the following period of five months after the rates had been advanced from Montgomery to Georgia destinations the movement was approximately 62,900 tons; the movement during the first period exceeded that of the second period by approximately 52,000 tons (Rec., 644).

Chehaw, which is another shipping point on the Western Railway of Alabama, and located about 39 miles east of Montgomery, shipped to Georgia destinations during the first period of six months approximately 8,290 tons; during the second period there moved only 94 tons, and I understand the pit is not now shipping at all.

The movement from Milstead, Ala., another shipping point on the Western Railway of Alabama, and 28 miles east of Montgomery, to Georgia points for the first or six months period, amounted to approximately 22,200 tons, and during the latter period approximately 13,600 tons, the difference being 8,550 tons.

Exam. Waters: I just want to get the purpose of it.

Mr. Gwathmey: I was about to have Mr. Browder explain that under the order of the Georgia Railroad Commission, Section 5 I believe it is, it became necessary to make a revision of the interstate rates following the intrastate revision that has been made in Georgia. This interstate revision was made effective August 1, 1925, as Mr. Browder has stated, and we are now undertaking to show how much the actual movement of this tonnage from Alabama into Georgia interstate fell off with the interstate rates on the advanced level and the intrastate rates in Georgia on the level of the scale as prescribed by the Georgia Commission in 1925, about which we are complaining in our Thirteenth Section Petition (Rec., 645).

[fol. 255] Mr. Burchmore: You say that was the effect of these rates, Mr. Gwathmey?

Mr. Gwathmey: Did I say what?

Mr. Burchmore: That this tonnage, the falling off of the tonnage was due to this change in rates?

Mr. Gwathmey: Well, we think that the change in rates certainly must have had something to do with it, because it was so very marked, and we are undertaking to show here, just as was shown in the case of the C. & W. C. Railway, how the application of this intrastate rate scale in Georgia has affected and reduced the interstate movement of the traffic.

Mr. Burchmore: Well, if you don't mind my calling your attention to something, isn't it a fact that your proposed scales will put his interstate rates still more out of line with the state, and still have the effect you are now illustrating?

Mr. Gwathmey: Mr. Browder stated a moment ago, if I correctly understood him, that his present rates interstate from Alabama into Georgia are now on the basis which the carriers are advocating here (Rec., 646).

The Atlanta and West Point and the Western Railway of Alabama have the only direct line from Montgomery to Atlanta; they have no branch lines. Prior to August 1, 1925, the rates on our line from Alabama points to Atlanta and oher Georgia Territory were materially lower than those established August 1, 1925. These low rates were established from Alabama into Georgia when the gravel pits along the Western Railway of Alabama were first established and shipments begun. Atlanta was sought as a market for part of the output and an investigation showed that sand was being brought to Atlanta from points on the Southern Railway between Atlanta and Columbus, Ga., at 30¢ per ton. It was necessary to make a very low rate from points on the Western Railway of Alabama to enable them to compete and for us to transport this sand to Atlanta (Rec., 647).

[fol. 256] When it came to gravel we found that other commodities competed, for example, broken stone, and broken stone was brought to Atlanta from points on the Georgia Railroad within 16 miles of Atlanta, and broken stone was produced right in the county; hence it was necessary to make very low rates to Atlanta from the pits on the Western Railway of Alabama. The market competition and competition of materials created low rates.

Cross-examination.

By Mr. Cotterill:

I have not examined the record as to the tonnage moved from pits on the Western to Georgia in 1925, so can't say that approximately 300,000 tons of a total of 833,000 tons originated by the Western (Rec., 648).

I have made no analysis of the movement for 1924. I have not compared them, but if I indicated that during the last five months of 1925 the movement of tonnage originating on our line to Georgia destinations fell off 50% as compared with the previous six months of 1925, it is true that the total tonnage originating on our line in 1925 was 10.75% greater than 1924 (Rec., 649).

I have not examined or analyzed the tonnage but in my opinion the tonnage in 1924 was probably a greater proportion to Georgia than in 1925 (Rec., 650).

There was a changed relationship to the Atlanta market in the revision of 1925, which caused the increases in cents per ton from the Alabama producing points to be greater than from the Georgia producing points. That is, the revisions which took place in the intrastate rates in Georgia and the interstate rates from Alabama to Georgia let us to increase the differ-tial that existed between those systems of rates prior to August 1, 1925, particularly at points on the Atlanta and West Point Railroad.

[fol. 257] I can't answer your question as to whether this loss of tonnage to Georgia is due to the widening of differentials, if we assume that the consuming demand in Georgia, particularly Atlanta, was unaffected by the fact that all rates to Atlanta were increased (Rec., 651).

In tendering this showing, I read these figures to mean that if the same basis of rates were used, mileage considered, in fixing rates between Georgia points as in fixing rates from Alabama points to Georgia points, that there would be greater opportunity to the interstate shipper to compete with the Georgia shipper for Georgia business (Rec., 652).

We never put them on the same mileage basis; our basis is higher than the basis established between points in Georgia.

Q. Well, now, let me ask, approximately of that tonnage originating on your line and moving to Georgia, what proportion is accounted for by the movements to Atlanta?

A. From Chehaw, Ala., the movement during the first six months was approximately 8,300 tons; 32 tons of that moved to Clayton, Ga., 788 tons to Anstell, Ga., 61 tons to Winder, Ga., and the rest of it moved to Atlanta and Atlanta group points or to points within the switching limits of Atlanta. During the second period, after August 1st, the 94 tons which moved, moved to Atlanta, none moved to any other points. And during the first period, the movement from Milstead was made up of approximately 7,500 tons to Atlanta, 120 tons to destinations not in the Atlanta Group, 4,000 tons to College Park, a point practically in the Atlanta group, 280 tons to Decatur, in the Atlanta group, approximately 4,800 tons to East Point in the Atlanta group, 80 tons to Hamilton, not in the Atlanta group, [fol. 258] 200 tons to Kingsberry, not in the Atlanta group, 40 tons to Lakemont, not in the Atlanta group, 47 tons to Thomaston, not in the Atlanta group, and 400 tons to Wallace Siding, not in the Atlanta group. During the second period——

Q. I wonder, Mr. Browder, instead of reading those totals in the record, can you examine your data and give just an outside approximation of the relative movement to Atlanta as compared to the movement to other points in Georgia on your line?

A. I would very much prefer to compile and file, if the Examiner will permit me, a statement showing the exact movement and the proportions of that movement to Atlanta and Atlanta group points, including the points on the Western of Alabama where the Atlanta rate was forced as low by the Fourth Section requirement, where the rate was made as low as the Atlanta rate by the Fourth Section requirement, and give you the exact figures, then the Commission may know exactly what effect this had; if that will prove it.

(Permission given to file exhibit tomorrow.) (Rec., 654.)

By Mr. Cotterill:

Q. Did I understand you to say, Mr. Browder, that in your thought the widening of the spreads to Atlanta as

between the Alabama producers and Georgia producers in the August revision created an opportunity for the Alabama producers more successfully to compete than theretofore in the Atlanta market?

A. If you did, you are the only man that drew any such conclusion from my remarks, I think it is quite clear that everybody else understood me to say just the reverse. We did not put the interstate shippers on a scale as low as that which the Georgia Commission fixed for the intrastate shippers. I am speaking of Atlanta and other places (Rec., 655).

[fol. 259] Mr. Burchmore: Can't we have the figures on that?

Mr. Cotterill: The figures have been put in the record. What you intended to convey was that the figures published in Georgia on this traffic were on the interstate mileage scale?

Mr. Burchmore: Yes.

Exam. Waters: Ask Mr. Browder the question.

Mr. Browder: I would rather get the figures than to give my opinion.

Exam. Waters: That will be shown up on your Exhibit?

Mr. Browder: I will do it, I didn't do it because it was a duplication, I was preparing to do that, but when I was asked not to duplicate anything that somebody else had put in, I left it out.

The Western Railway of Alabama, the Atlanta & West Point Railway and the Georgia Railroad feel that it would be right and proper to adopt a maximum mileage scale for the construction of rates on the commodities here being considered, giving the carrier the privilege to depart from that mileage scale downward when it found conditions requiring it, and to do so would not unjustly discriminate in its treatment of its various patrons (Rec., 656).

I made the positive statement that was the policy of those three companies, and it was their request of this Commission to so fix the standard for making rates on these commodities.

The differentials to Atlanta are invariably greater than the distances to Atlanta from some of the important pro-

ducing points in Georgia for our principal Alabama producers seeking the Atlanta market.

Q. Well, then, from some of the important producing points in Georgia under a uniform application of the single mileage scale, the charge to Atlanta, Ga., from such producing points in Georgia would in fact be less than from the producing points on your line in Alabama to Atlanta?

A. Not if the distance from the producing points on our line were less than from these other points to Atlanta (Rec., 657).

[fol. 260] If we had a mileage scale the rates will be less from the shorter distant points in some instances (Rec., 657).

I cannot answer that we desire to make rates to Atlanta, Ga., from producing points on our line on these products lower than the mileage scale so as to overcome the differences in rates between our Alabama producers and some of the Georgia producers in the Atlanta market, because we have not yet seen the effect of the application of the uniform scale from all shipping points to Atlanta. We might not find it either necessary or desirable to make a change. We might find the shippers on the Western Railway would get a fair share of the competitive business from Atlanta and other Georgia points. The interstate parties, the shippers and the carriers, shall judge as to what shall be the fair share of the Montgomery producers of the consumption in Atlanta. Our lines have always felt that their interests were interwoven with those of their patrons. If the shipper of sand and gravel on the line of the Western Railway can find no market for his product, the Western will have no tonnage in that class of traffic and will derive no revenue (Rec., 658).

By the figures I gave, we have already found that the revision made in August decreased the consumption in Georgia of Alabama products.

Q. Now, this maximum mileage scale of the carriers I am told would still further widen the spreads as between the Alabama producing points and some of the important Georgia producing points into the Atlanta market.

Mr. Gwathmey: That is one of the very issues in the case, we are asking the Commission here to remove that spread entirely under the Thirteenth Section petition.

[fol. 261] Mr. Cotterill: I might explain that as to this particular instance, which is of quite vital consequence to my clients, I was attempting to test out now in this one case just what is the true situation of this asserted reservation of right on the part of the carriers to depart from the mileage scale; I want to find out if I can by competent examination if the situation to be faced by my clients is that in the case of Birmingham, their second largest market, producers in Georgia are to have a rate parity with them, although their distance is greater than from Alabama to Birmingham, but that when we take the other direction, and take Atlanta as the chief individual market, the disadvantage of distance suffered by my clients is not to be overcome as compared with the same Georgia producers (Rec., 659). I am trying if I can to determine whether or not in sum and substance this asserted reservation carriers us back to the point where the shippers are left to their individual negotiations with individual carriers and get what they can, and go without what they cannot, or is there to be some definite rule according to which a man can tell in advance whether he is entitled to a departure from the mileage scale or not.

Mr. Gwathmey: I object to any more argument at this time.

Mr. Burchmore: I would like to answer that.

Mr. Cotterill: I was trying to test out the significance of this reservation of right, I want to find out if it is to be covered by some general rule, or does it mean some shipper must take the chances?

Mr. Burchmore: I would like to find out whether the Commission has a right to condemn rates without a hearing, you understand the Commission has that right, Mr. Browder?

Mr. Browder: I would not like to set myself up as suffi-
[fol. 262] ciently acquainted with the law.

Exam. Waters: We understand the position of Mr. Cotterill very thoroughly I think, of course what the carriers have stated here almost universally, they want to be permitted to depart from the scale when they see fit to do so without violating the act; how far that is going to go will be for the Commission to say, but would you propose to put in a rate lower than the mileage scale that would not be compensatory (Rec., 660)?

Mr. Browder: No, s.., I would not undertake at any time to establish a rate which would result in the loss of net revenue if a volume of tonnage moved on that rate, and I might answer this question he has asked.

Mr. Gwathmey: That is just argument.

Mr. Browder: We can't tell prior to the result of operation of scales of rates what that result will be, that is an impossibility, you might as well ask a doctor what he is going to prescribe for a patient before he got to the patient.

I think a mileage scale should be prescribed in this case because that is the only proper basis for a general revision of rates on any commodity.

Q. But don't you also think, if there is a continuous breaking in on that scale, how long do you think it is going to last?

A. You asked me how long I thought it was going to last, I can answer that, if the law is complied with and intelligence is used in departing from the scale, it will last forever, if the scale is just, fair and reasonable it will be permanent.

By Mr. Burchmore:

Q. How long do you think a mileage scale would last that any departures therefrom would not be permitted (Rec. 661)?

[fol. 263] A. I don't know, but it wouldn't last as long, it wouldn't answer as good a purpose as the one which was flexible.

Exam. Waters: The question I am driving at is whether or not a mileage scale is the thing in this case; I have some doubt about it after hearing all this testimony.

Mr. Burchmore: I would like to argue that at the proper time.

Mr. Cotterill: Counsel seems to prefer that Mr. Browder not answer my question, therefore I don't press it, because it seems to be the fact that it borders on the domain of argument, but in reality I was only trying to find out whether these exceptions are to be covered by some definite rule, if that be the proposal of the carriers, or whether or not it is left to simply the generosity and self-interest and persuasiveness of individual carriers.

Mr. Walker: Don't you know that that same custom and practice has governed ever since there has been a railroad in this country?

Mr. Cotterill: It used to.

Mr. Walker: I don't think we have reached the point yet where the Commission is going to fix a strict mileage scale and allow no one to depart from it.

Exam. Waters: Of course, there is a point beyond which, I think it is self-evident that a shipper of sand cannot go at a reasonable rate to destinations, there are certain destinations in this territory, of course to which he cannot reach (Rec., 662).

Mr. Browder: There are certain differences in rates to a given point of destination which are so great that the man with the higher of the two being compared cannot do business successfully.

[fol. 264] By Exam. Waters:

Q. In other words, you cannot overcome or overlook in this case entirely geographical advantages, can you?

A. You cannot.

Q. Is it, even assuming a mileage scale was put in as suggested by the carriers, is it their intention to try to overcome that altogether?

A. No, sir, not by any means, I think I tried to make it clear, and I think I did, when I said that if intelligently used in departing from this scale and the law was complied with, we couldn't hurt anything or anybody or ourselves, the scale would not be hurt itself.

It is the purpose of the Western Railway of Alabama and the Atlanta & West Point Railroad in using the scales which we have asked the Commission to approve, to use the single and not the joint line scale or joint haul scale in fixing rates from points on the Western of Alabama to points on the Atlanta & West Point Railroad, and if I may be allowed to do so, I would like to state my reasons for that (Rec., 663).

The Interstate Commerce Commission has in several instances stated that these two lines must use the single line scales which it has fixed where it has fixed differing scales for single line and joint haul service; for instance, the

Livestock Case is one with which the Examiner doubtless is familiar, and these companies have decided not to raise that question with the Commission in the sand and gravel and stone, etc., rate hearing.

Our lines handle sand and gravel from Montgomery to Atlanta in open equipment, not altogether in returning empty coal cars. The movement of commercial and domestic coal to points on the Atlanta & West Point and the Western Railway is largely from the Alabama coal fields (Rec., 664).

[fol. 265] We get a large part of it from Opelika. That equipment is returned sometimes loaded and sometimes empty. Sometimes we have occasion to utilize returning empty coal equipment in handling sand and gravel from Montgomery to Atlanta. I think that under a normal movement of sand and gravel from Montgomery, Ala., to Atlanta, Ga., and Atlanta Group points, and when I say Montgomery I mean the other points of origin on the Western of Alabama, that a small part only of our equipment would be coal cars which had been brought into Montgomery via Atlanta loaded with coal and were being returned empty from Montgomery via Atlanta to the points of origin from which the coal came. I can't say whether in returning empty coal equipment to our connections at Montgomery or Selma, which had been loaded originally to Atlanta or beyond, the movement would be empty in the opposite direction of the movement or our sand and gravel from Montgomery to Atlanta (Rec., 665).

Those cars might be used up to Chicasaw Bluff, with loads, and then brought on to the main line and carried on to Opelika empty from there, I am not familiar with the method of providing cars for that movement, and I can't answer your question, for I don't know. I endeavored to give you an answer *to* regard to your Atlanta question, and made it as nearly complete as I could, for I knew what you wanted to put into the record, and I was glad to give you the facts.

Of the total tonnage I gave for the period January 1 to July 31, 1925, for the movement from Montgomery, Arrowhead, Chehaw and Milstead, being 113,800 tons from Montgomery, 64,000 tons from Arrowhead, 8,290 tons from Chehaw, and 22,200 tons from Milstead, I don't think the move-

ments were handled in trainload lots; I mean by that I don't think we handled it in extra trains containing gravel cars only. I doubt seriously if we have had anything like that [fol. 266] much tonnage of coal (Rec., 666).

It is a fact that in handling sand and gravel from Montgomery to Atlanta we cannot as a general rule utilize empty returning coal equipment for such service, and therefore have the empty return of the sand and gravel equipment without a revenue therefrom. I am not familiar with the movement from Georgia to Birmingham. I am sorry I can't tell you the character of the open-top equipment which we have used in this traffic from Alabama to Georgia (Rec., 667).

I think we have acquired open-top equipment that was greater than our need would be for coal or commodities other than sand and gravel, and it follows that we acquired it just for the purpose of handling sand and gravel. I do not know whether my road frequently handled those loaded cars in trains consisting of nothing else during the period of the normal movement to the Atlanta market. I can't say that I am thoroughly familiar with the transportation characteristics of sand and gravel. My time has been devoted largely to trying to fix just, fair and reasonable rates for the transportation of those commodities, but we have never gotten them to the point where we are willing to regard them as just, fair and reasonable compensation (Rec., 668).

In my opinion, based upon my knowledge and experience in this business, I don't think that there are any differences which are material that would justify making a lower or higher scale for one commodity than for any of the other commodities here under consideration. I think you have drawn a wrong conclusion when you say that my statement showed that the preponderance of the movement of these commodities was to Atlanta. Mr. Cotterill referred to the fact that the preponderance of tonnage was not even to Georgia points (Rec., 669).

[fol. 267] Yes, sir, I am to furnish an exhibit and show what the proportion of the tonnage to Atlanta was of the total tonnage, as compared with the total tonnage to Atlanta. The difference in our rates effective August 1, regardless of tonnage, is also to be covered by a statement.

From Montgomery and other shipping points on the

Western Railway of Alabama to Atlanta and intermediate points on the Atlanta & West Point Railroad, the rates fixed by the Western Railway of Alabama for the transportation of sand were lower than those that they fixed for transportation of gravel, due to the fact that at Atlanta the market competition was much more severe in sand than it was in gravel and kindred articles. We could transport gravel to Atlanta successfully at a higher rate than we could obtain for transporting sand (Rec., 670).

Referring to my Exhibit No. 197, E reads clay gravel, sand and stone, it means straight clay, of which none originates on the Western of Alabama; it means gravel, whether that gravel be mixed with sand, or be mixed with clay, or be clean, clear, washed gravel; it means sand, whether the sand has some gravel or not. It means clay, and it means straight cars of clay, but none originated on the Western, nor did any stone originate with the Western.

(Witness excused.)

C. D. Bailey was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Bailey:

I am Assistant to the Traffic Manager of the American Short Line Railroad Association, Atlanta, Ga. I have been in the traffic departments for some fifteen years. The lines I represent are the so-called short lines, substantially those given special treatment by the Interstate Commerce Com-[fol. 268] mission in such dockets as No. 13494. As for the Georgia lines, I do not represent the Gainesville-Midland, Gainesville, Southwestern & Gulf or the South Georgia Railway (Rec., 671).

In an endeavor to shorten the testimony, I believe it has been agreed by the parties at interest that the short lines should be given special treatment, but feel it necessary that we submit a scale for their account. The scale submitted by the standard lines may be a just and reasonable scale on the commodities here involved for those lines, but gen-

erally speaking it is too low for the short or weak lines, as they traverse a sparsely settled section and their tonnage density is of necessity low, and further their financial condition is such that they must carry a higher level of rates. Then, too, these lines handle very little through or overhead traffic, some of them none, their principal source of revenue being on traffic which they either originate or deliver.

I file as my Exhibit No. 198 a statement of the financial condition of about 65 short lines in the Southeast for the year 1924.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 198, Witness Bailey.") (Rec., 672.)

A number of these lines shown on the statement however are not interested in these proceedings, but the statement will give a fair idea as to the general condition of the short lines in the territory involved. There are 19, of a total of 25, of the Georgia lines shown there. There are some short lines that are interested that are not shown.

Exam. Waters: Do you appear for those, Mr. Gwathmey?

Mr. Gwathmey: No, sir.

Exam. Waters: Who does?

[fol. 269] I don't know.

Mr. Bailey: I will file with you a little later, if I may be permitted, a complete list of those lines, about 25, that I represent, that is, Georgia lines.

By Exam. Waters:

Q. Have you filed your appearance?

A. Mr. Streyer filed it, but he was unable to be here.

Mr. Gwathmey: Mr. Streyer filed the petition, as you will recall, Mr. Examiner.

Exam. Waters: What I wanted was some complete statement of all the short lines that were involved in this proceeding, that is, the weak lines or Class 2 lines or the lines that are entitled to special treatment (Rec., 673).

Mr. Bailey: If you will indicate whether or not any lines in Mississippi should be filed, the Alabama and Georgia

lines of course are interested in it, but if you want those lines filed, I will be glad to file them with you.

Exam. Waters: I don't know, if you point out on the record which lines are claiming special treatment in this case.

Mr. Price: There are only eight of the short lines that are parties to this complaint.

Mr. Walker: The rest of them were brought in a little later.

Mr. Price: Under that general order issued by the Commission to show cause whether——

Mr. Bailey: That is why I made that statement.

Mr. Price: There is no direct complaint by any of the short lines except those eight that joined the Coast Line. [fol. 270] Mr. Burchmore: There is no order or anything else bringing in the Fernwood, Columbia & Gulf Railroad Company, is there?

Mr. Price: No, sir, that is not a Georgia line.

Mr. Burchmore: But they are on this exhibit.

Mr. Bailey: I will file with you in the morning a list of about 25 of those Georgia lines, without going into detail as to the financial condition of these short and weak lines, I respectfully refer you to the special treatment given them in Docket 13449, involving rates on lumber and forest products in Southern Territory; Docket 13494, involving class rates within Southern Territory; (Rec., 674) also I. & S. Docket 1885, involving brick and clay products within Southern Territory, the latter case being decided April 15th, 1924, and the Commission used the following language at Page 562: "We do not regard the full combination basis as warranted on this low grade commodity. We are of the opinion that for application to points on these short lines, a differential of 3 cents might properly be added to the proposed scale rates, to accrue alone to the short lines in addition to their divisions out of the joint rates."

In Docket 13494, the Commission used the following language: "Apparently, these short and weak lines are the object of general sympathy in the Southern Territory, and there is little disposition to question the fact that many of them need help of some sort, and most of them are surrounded by competitive influences either of other railroads

or of motor trucks, and their charges are limited by other factors than public regulations."

I file as my Exhibit No. 199, the mileage scale of rates for single line application and for joint line application over those short lines.

[fol. 271] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 199, Witness Bailey.") (Rec., 675.)

The single line scale to apply when the rate is made by the use of only one of these short line's mileage, and the joint line scale to apply when the rate is made by the use of two or more short lines on one or more short lines and one or more standard line's mileage. I might say this is the scale submitted to the Alabama and Georgia Commissions in 1921, reduced 10 per cent, and is to apply on all commodities here involved. It will be noted that this scale is only extended to and including 300 miles, the basis for which single line is 120 per cent of the single line rate submitted by the standard lines, the joint haul rates made based on 120 per cent of the single line rate submitted by the standard lines added to the differentials between the single line rates submitted by the standard lines and joint haul rates submitted by the standard lines. Should the Commission see fit to further extend these scales, I would suggest that the same basis be applied.

The mileage scale of rates that I have submitted is the maximum scale for application generally speaking over these short lines, but account of the peculiarity of this traffic, I desire here to state that a few of these short lines on which are located sand and gravel pits desire to carry a scale of rates nearer that of the standard lines' scale. It must be appreciated that the owners of pits located on these short lines must be given rates which will permit the operation of such pits, and in doing so, they will desire to place their operators on a parity with their competitors located on the rails of standard lines, and with a margin of profit sufficient to compensate the carrier for any absorption (Rec., 676).

[fol. 272] I ask the Commission in prescribing a scale for application on these short lines to do so by prescribing a maximum scale of rates sufficiently higher than that pre-

scribed for application over the standard lines so as to protect these carriers in general. If this is done, these short lines who have pits in operation on their lines will carry or desire to carry rates which will be remunerative to them, and permit continued shipments from their pits. It is stated by the Commission in Docket 13494; "Many of these lines are surrounded by competitive influences, and their charges are limited by other factors than public regulation." In other words, the volume of this traffic which a few of these lines receive from pits located on their lines, and there is only a few, may force them to carry the same or slightly higher, say 5 to 10 cents per ton, than the standard line scale. The operators of pits on these short lines must be able to meet the competition of their competitors. The various State Commissions over the South have granted to this class of carriers special treatment, their usual basis for rates in approximately 120 per cent of the rates prescribed for the standard line carriers (Rec., 677).

My Exhibit No. 198 is a general statement of lines in Southern Territory that generally speaking require Fourth Section relief which is generally granted by the Commission, and prepared for that purpose. It is a statement which our lines have made up for other purposes, and I have used it here simply because it was broad enough to include certain of the lines that are involved, but not necessarily as having any bearing whatever from the stand-
[fol. 273] point of lines over in the Mississippi Valley or up in Tennessee or through other parts of the South. Those lines that are not interested of course to be eliminated.

(Witness excused.)

R. A. CHADWICK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Walker:

I am Commerce Agent for the Mobile & Ohio Railroad (Rec., 678), and have been engaged in the handling of

traffic matters in Southern Territory for almost 30 years, the past 10 with the M. & O. I am familiar with the issues in this case. I might say that I had nothing to do personally with, or in connection personally with the conferences which discussed and prepared this scale which has been submitted for general application. The scale was submitted to and approved by our company as being acceptable for general application on our line on both interstate and intrastate traffic. Now, I am personally familiar with the adjustment of rates in the state of Mississippi, I have had a great deal to do with those rates, and I am personally acquainted with them and with the history back of them.

The M. & O. has a line from Montgomery, Ala., which extends into Mississippi and has considerable mileage in Mississippi. The issue in these complaints in which the Mobile & Ohio Railroad is principally interested is the allegation that complainants, the communities of Chattanooga, Tenn., and Montgomery, Ala., and sand and gravel therefrom are subjected to undue and unreasonable prejudice and disadvantage in favor of intrastate shippers, and shipments of sand and gravel between points in the state of Mississippi (Rec., 679).

[fol. 274] The M. & O. Railroad does not reach Chattanooga, Tenn., but does reach Montgomery, Ala., with its own rails over its Montgomery Division, which extends from Artesia, Miss., on its main line to Montgomery, a distance of 181 miles. This extension from Artesia to Montgomery passes through Columbus, Miss., and crosses the Mississippi-Alabama state line about 24 miles east of Artesia. Montgomery is, therefore, about 157 miles from the Alabama-Mississippi State line via the M. & O. Railroad. The present Mississippi intrastate rates of the M. & O. Railroad on sand and gravel are lower than the rates in any state in the South and lower than any scales prescribed by this Commission. I do not mean to say that the M. & O. rate for every distance is lower than in any other state for the same distance, but taking our Mississippi scale as a whole that is true, and there are very few specific instances where that is not true.

The only sand and gravel pits on our line that are shipping in any substantial quantities are located at or within a few miles of Montgomery, Ala., and at or within a few

miles of Columbus, Miss. My investigation shows that there has been no movement from the Alabama pits referred to, to points in Mississippi via our line (Rec., 680).

The production of sand and gravel at and near Columbus, Miss., is very large. During the four months of April, June, August and October, 1925, the M. & O. Railroad handled from those pits to points in the State of Mississippi 1,934 carloads of gravel weighing 82,650 tons, an average of 42.74 tons per car, and 101 carloads of sand weighing 4,229 tons, the average being 41.87 tons. About 88 per cent of this tonnage of sand and gravel was for municipal roadbuilding. 65½ per cent of this tonnage was single line movement, that is, to points on the M. & O. Railroad, and 34½ per cent was joint line movement, that is, [fol. 275] to points on other lines. Of the single line movement the shortest haul was 5 miles and longest 125 miles. The average weighted haul was 63.8 miles. Of the joint haul movement the shortest haul was 25 miles, the longest haul 205 miles, and the average weighted haul 84.7 miles. The average weighted haul of the combined single and joint line movement was 71 miles.

Assuming that the four months named are representative of the yearly movement, (and they were selected by the Mississippi Railroad Commission and sand and gravel producers in Mississippi as being so), the total tonnage of sand and gravel shipped from pits in Mississippi on the M. & O. to points in Mississippi via the M. & O. Railroad was 260,000 tons in 1925. It will, therefore, be seen that our interest in the rates on sand and gravel in Mississippi is substantial. All of this traffic moves on the mileage scale prescribed by the Mississippi Railroad Commission. There is no joint line mileage scale on sand and gravel in Mississippi (Rec. 681). Rates on shipments moving over two or more lines are made on combination of proportional rates which are 10 per cent less than the local rates. However, under ruling of the Mississippi Railroad Commission, the M. & O., Southern and Columbia & Greenville Railway are considered as being under "one ownership, management or control," and are required to apply the single line scale on shipments moving over those lines.

As our interest is largely in the Mississippi rates, I want to give this Commission a history of those rates from 1912 to date.

I offer as my Exhibit No. 200 a series of statements which are numbered pages 1 to 11 inclusive. Page No. 1 is a chronological statement of the Mississippi intrastate rates of the Mobile & Ohio Railroad on sand and gravel, [fol. 276] carload, from September 4th, 1912, to date. In August, 1912, the Mississippi Railroad Commission issued its Order No. 2270, effective September 4th, 1912, prescribing a scale of rates on sand and gravel, carload, for application on all lines in Mississippi on intrastate traffic. Those rates are shown on my Exhibit under column headed September 4th, 1912.

Exam. Waters: The exhibit will be received and made a part of the record, if there is no objection (Rec., 682).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 200, Witness Chadwick.")

The date, September 4, 1918, in the main heading on page 1, should read September 4, 1912.

While the Mobile & Ohio protested against those rates as being too low, nevertheless it published them under protest. The Illinois Central and Y. & M. V. Railroads considered the Commission's rates so low that they applied for and secured a restraining order from the court against the enforcement of those rates on their lines. While the court case was pending, conferences between officials of the Illinois Central and Y. & M. V. and the Mississippi Commissioners and other state officials, including the Governor and Attorney-General, were held for the purpose of reaching an agreement with respect to those rates, if possible. As a result of those conferences, it was agreed that if the I. C. and Y. & M. V. would withdraw its suit and put into effect a certain scale which I will later show, to be applied on gravel for municipal road-building, the Commission would withdraw its Order No. 2270 so far as it applied to the Illinois Central and Y. & M. V. Railroads. This scale was from 50 to 100 percent higher than the scale prescribed in its Order No. 2270 which remained in force against the other carriers (Rec., 683). [fol. 277] Moreover, the Illinois Central and Y. & M. V. were not required, under the new scale to make any reductions in their rates on gravel for any other than municipal

road building, nor on sand for any purpose which were much higher than the new rates on gravel for municipal roadbuilding, and still higher than the rates prescribed in Order 2270, which applied on sand and gravel for all purposes. I will show in another exhibit how those rates compared.

No further changes were made in these rates until May 1st, 1915, when the rates on sand were made as shown under Column headed "May 1st, 1915," by Order No. 4212 of the Mississippi Commission. The effect of that order was to substantially reduce the rates of the Illinois Central and Y. & M. V. because of the much higher rates they had been permitted to maintain previously, but it will be seen that the Mobile & Ohio rates were increased because of the low rates being maintained by the Mobile & Ohio under Order No. 2270.

The rates shown in Column No. 1 were those prescribed by the Mississippi Railroad Company September 4, 1912, for all Class 1 carriers in Mississippi, and its order was taken into court by the Illinois Central and Y. & M. V. The M. & O. did not participate in that litigation, and as a result the I. C. and Y. & M. V. were permitted to publish higher rates than those shown in Column 1 (684).

That you may see what these rates are now, they are shown under Column headed "May 1st, 1915" covering sand. Notwithstanding the result of the litigation, the M. & O. was not permitted to increase its rates above the Column 1 rates. The Column "May 1, 1915," only applied to sand; the purpose of the order authorizing these rates was to reduce the rates in effect on sand on the I. C. and the Y. & M. V., but it had the opposite effect on the M. & O. and increased our rates (Rec., 685).

[fol. 278] Order No. 4212 applied to rates on sand for municipal roadbuilding only, and was so published by the Illinois Central and Y. & M. V. leaving in effect on those lines higher rates on sand for other than municipal roadbuilding. Following the issuance of this Order the M. & O. was granted authority to apply the rates shown in Order No. 4212 on sand for all purposes. In other words, we were permitted to advance our rates on sand for other than municipal roadbuilding so as to be no lower than on sand for municipal roadbuilding.

No further changes were made in these rates until June 25, 1918, when both sand and gravel rates were increased one cent per 100 pounds, or 20 cents per ton, under General Order No. 28 of the Director General, and on August 26th, 1920, were increased 25 per cent under Ex Parte 74.

Q. That brings you down to the column marked "October 1st, 1921," doesn't it?

A. Yes, sir. On July 6th, 1921, the Mississippi Commission issued its order No. 5247 prescribing a scale of rates on sand and gravel for highway construction, beginning at 40 cents per ton for distances 15 miles and under.

By Mr. Burchmore:

Q. Wasn't that 5257?

A. No, sir, I will come to that later. This scale was considered by the carriers to be so low that they applied for and secured a restraining order from the court. Before the case went to trial, the Attorney General of the state of Mississippi told the Mississippi Commission that the enjoined rates were unreasonably low and that he would not undertake to defend them in court, and suggested a new scale. While the carriers considered the rates suggested by the Attorney General as being too low, nevertheless, in order to avoid further litigation they published [fol. 279] them under protest. The Mobile & Ohio joined the Illinois Central and other carriers in contesting the Commission's order in this instance, and thereby obtained the benefit of the revised scale. Those are the rates prescribed by the Mississippi Commission in its Order No. 5257, effective October 1st, 1921 (Rec., 686).

None of these columns show the rates which were enjoined. I stated they started off with 40 cents for 50 miles and longer. These rates were arrived at by taking the Illinois Central—Y. & M. V. rates of June 24th, 1918, which applied on sand and gravel for municipal roadbuilding, and increasing them 25 per cent twice, to reflect the June 24th, 1918, and August 26, 1920, increases, instead of the arbitrary increase of 20 cents per ton authorized by the Director General effective June 25th, 1918, and the 25 per cent increase of August 26th, 1920. This resulted in substantial reductions in the rates of the Illinois Central and

Y. & M. V. There have been no changes in those rates and they are now in effect. There have, however, been some changes in the minimum carload weights and descriptions as shown on the bottom of the exhibit (Rec., 687).

It will be seen that those rates, applying on sand and gravel for highway construction, effective October 1st, 1921, resulted in substantial reductions in our existing sand rates, but that, generally, they increased our gravel rates for distances over 30 miles, and reduced them 3 cents per ton for distances 30 miles and under. To state it differently, it made our rates on Commercial gravel, or gravel for other than highway constructon, lower for distances over 30 miles, and 3 cents higher for distances 30 miles and under, than on gravel for highway construction.

[fol. 280] With that situation before us we made application to the Mississippi Commission for authority to advance our commercial gravel rates so as to be no lower than the rates on gravel for highway constructions. In response to our application, the Mississippi Commission granted us the authority asked for, but coupled with it the requirement that we reduce our rate for distances under 30 miles, from 50 cents to 47 cents per ton, notwithstanding they were permitting the Illinois Central and Yazoo & Mississippi Valley Railroads to maintain a rate of 70 cents per ton for that distance.

All of the rates shown on this exhibit are the rates of the M. & O. Railroad, and were prescribed by the Mississippi Railroad Commission and published by us under protest.

Since October 1st, 1921, the rates of the Illinois Central and Y. & M. V. on sand and gravel for municipal roadbuilding, have been the same as the M. & O. Rates, but on sand and gravel for other than municipal roadbuilding the Illinois Central and Y. & M. V. rates are substantially higher (Rec., 688).

Notwithstanding these low rates in Mississippi, the Mississippi Railroad Commission is now considering a further reduction in the rates on sand and gravel for municipal roadbuilding under Docket No. 5257, which has been heard but not decided.

We were cited to appear before the Mississippi Railroad Commission, to appear before them and show cause

why we should not be required to reduce our rates on sand and gravel for highway construction in Mississippi. We had a 10-days hearing on it. I have some other exhibits and desire to make very little comment on them (Rec., 689). [fol. 281] Page No. 2 is a comparison of our present Mississippi rates with our proposed scale in the last column, and with the rates we are carrying on interstate traffic in other states through which we pass. I don't think it necessary to make any comment, the comparison speaks for itself.

Sheet No. 3 is a comparison of the present single line rates of the Mobile & Ohio Railroad on sand and gravel in Mississippi with other mileage scales shown below, most of which were prescribed by the Interstate Commerce Commission.

Sheet No. 4 is a continuation of the mileages shown on Sheet No. 3.

Sheet No. 5 is a statement of the Mobile & Ohio Railroad's Mississippi Rates and the Proposed rates, with intrastate rates in the states in the south other than those served by the Mobile & Ohio Railroad. I want to make a correction at the bottom of that page, the explanation of C should be gravel, not washed; D should read gravel washed. C reads to apply on Class 1 roads on gravel, not washed, and sand (Rec,, 690).

There is one other thing I want to call attention to, the unusual effect on the Mobile & Ohio Railroad's rates caused the revisions in the sand and gravel rates which have been made by the Mississippi Commission since 1912. In addition to the general increases under General Order No. 28 and Ex Parte 74, the Mobile & Ohio Railroad has received two increases in its rates since 1912, both of which were due solely to orders of the Mississippi Commission which were issued for the purpose of reducing the rates of the [fol. 282] Illinois Central and Y. & M. V. Railroads. To illustrate, on April 13th, 1915, the Mobile & Ohio Railroad's rate on sand for commercial use for 75 miles was 30 cents, and the Illinois Central and Y. & M. V.'s rates was 70 cents, on the day following May 1st, 1915, the Commission issued its order No. 4212, prescribing a new scale of rates on sand for application on all lines in Mississippi, and under that scale the rate for 75 miles was 45 cents, the effect of this new scale was to reduce the Illinois Cen-

trol and Y. & M. V. Scale from 70 to 45 cents, and to advance the Mobile & Ohio Railroad's rate from 30 to 45 cents.

That discrepancy existing at that time between the Mobile & Ohio rates and the Illinois Central rates, was brought about by the fact that the Illinois Central Railroad took their case into court and the Mobile & Ohio did not (Rec., 691).

The M. & O. did not ask the Mississippi Commission to allow it to increase its rates up to the rates of the Illinois Central after that road got its increase by court proceeding. What we did ask the Commission to let us do was to continue to carry a rate of 50¢ on sand for distances of 50 miles and under, instead of reducing it to 47¢, which was the rate prescribed in Order No. 4212. They declined to do this, although the I. C. and Y. & M. V. rate at the same time was 70¢ a ton.

Another illustration is gravel for road building purposes; on September 30th, 1921, the Mobile & Ohio Railroad's rate for 75 miles was 62½ cents, and the Illinois Central and Y. & M. V.'s rate was 81 cents, on October 1st, 1921, the following day, the Commission issued its Order No. 5257, prescribing a new scale of rates on gravel for roadbuilding for application on all lines in Mississippi, and under that scale the rate for 75 miles was 70 cents. The effect of this new scale was to reduce the Illinois Cen- [fol. 283] tral and Y. & M. V.'s rate from 81 to 70 cents, and to advance the Mobile & Ohio Railroad's rate from 62½ cents to 70 cents. In other words, the only advances we have been able to get in Mississippi were because of the attacks made on the Illinois Central Railroad's rates, and because of orders issued by the Commission for the purpose of reducing the Illinois Central and Y. & M. V.'s rates (Rec., 692).

Page 6 compares the present rates of the Mobile & Ohio Railroad on sand and gravel with the present rates of the Illinois Central Railroad on sand and gravel; the rates shown under the heading "I. C. Railroad" also apply on the Y. & M. V. Railroad.

But I would like to also call attention to Page No. 7, which shows the rates prescribed by the Mississippi Commission in 1912, which were not contested by the Mobile & Ohio Railroad, but published under protest, compared with the rates

that were secured by the Illinois Central and Y. & M. V. Railroads as the result of their contesting the Commission's order. The first two columns of rates apply on sand, and compare the Mobile & Ohio Railroad rates with the Illinois Central and Y. & M. V.'s rates.

The Illinois Central and Y. & M. V.'s rates are from 50 to 150 percent higher than the Mobile & Ohio Railroad's rates. The next two columns compare the gravel rates of the Mobile & Ohio Railroad with the gravel rates of the Illinois Central and Y. & M. V. Railroads; they also run in some cases as high as 100 percent greater than the Mobile & Ohio (Rec., 693).

I just wanted to call particular attention to Docket No. 2270, this is the first order issued by the Mississippi Railroad Commission prescribing rates on sand and gravel in [fol. 284] Mississippi, that is, the order issued in August, 1912, and made effective on the 4th of September, 1912; that is the scale in which they prescribed a rate of 1 cent per 100 pounds for 50 miles or less, etc. Then, there is a note following the scale, that I would like to call attention to, reading as follows: "The publication of the above rate however shall not prohibit any railroad from transporting sand or gravel at a less rate when used for the construction of public highways or public buildings." (Rec. 694.)

Cross-examination.

By Mr. Martin:

From points in the Iuka District to points on the M. & O. there are some special rates which were put in by the Mississippi Commission to dispose of a complaint that had been before the Commission for many years. The ones from Iuka to certain points on the M. & O. when published were less than the mileage scale but whether they are now I can't say (Rec. 695).

My understanding is that there are very few commodity rates in Mississippi lower than the scale, with the exception probably from Iuka. The M. & O. rates on sand and gravel are the same for all purposes, but the other lines have a scale that applies for commercial use which differs from the scale where the consignment is to a public official.

I might say that I remember that those rates from Iuka to points on the Mobile & Ohio Railroad were put in after a conference with the Mississippi Railroad Commission in which the Commission stated that if the Southern Railway and Mobile & Ohio Railroad would publish certain specific rates from Iuka to points on the Mobile & Ohio Rail- [fol. 285] road, they would dismiss a complaint pending against the carrier attacking the rates generally in Mississippi (Rec. 696).

Those are the only rates I know of to points on the M. & O. and those are the conditions under which they were published. I show the Louisiana Scale of rates on page 5 of the Y. & M. V. No, it isn't a fact that the Louisiana Commission prescribed scales of rates on roadbuilding material over there today lower than in Mississippi. You, Mr. Martin, filed an exhibit in that last hearing in Mississippi under Docket No. 5257, a letter from the Chairman of the Louisiana Commission, in which he stated that the arrangement under which these special rates on roadbuilding gravel were applied would expire December 31, 1925 (Rec. 697).

I beg your pardon, it was with respect to Arkansaw, and not in respect to Louisiana. I understand Louisiana has a scale there under the heading of Arkansas which are lower than the rates that are being applied in Louisiana west of the river. They are not lower than in Mississippi. My understanding is that the rates applicable in Louisiana west of the Mississippi River are the same as they are under the head of Arkansas, which are higher than the rates in Louisiana east of the Mississippi River. That is shown on page 5 (Rec. 698).

I don't remember having an exhibit that applied west of the river or showed that the Louisiana rates were lower than those applied in Mississippi. The only rates in Louisiana I know of are shown on page 5 under the heading, "Louisiana," Column A—those are for municipal and roadway building.

When I said there were 8200 cars moved, the movements occurred in April, June, August, and October, 1925 (Rec. 699).

[fol. 286] Mr. Martin: I move to strike out all the testimony and exhibits dealing with the question of discrim-

ination in Mississippi intrastate rates against the interstate rates, I renew my objection at this time.

Exam. Waters: The objection is on the record.

The M. & O. has a route from Montgomery to Birmingham in connection with the Southern through Maplesville, or in connection with the Alabama Great Southern and the L. & N. through Tuscaloosa (Rec., 700).

By Mr. Cotterill:

I think my exhibits show there are specific rates published lower than the interstate mileage scales on the M. & O. Railroad but I don't think they move any business from Memphis, while on the I. C. the rates from Memphis are on the mileage scale, with the exception of certain proportional rates that apply from Memphis on traffic originating at points beyond (Rec., 701).

I understand there is and has been for years a large movement of gravel from the Iuka District and from Tennessee pits into Memphis. I know what the rates are and I think I know in a general way why the rates were made as they are. I understand the I. C. is not to be represented by witnesses nor counsel, but I may say that I was authorized by the Illinois Central to state that they regarded the present rates in Tennessee as entirely too low and that they were not even willing to subscribe to the mileage scale submitted by the other carriers because they considered them too low, particularly for short distances (Rec., 702).

[fol. 287] Q. Were you authorized to make any statement as to why they are not present and participating in the case?

A. The only information I have direct from them is a letter from Mr. Sheppard, Assistant General Freight Agent.

Mr. Walker: The Illinois Central Railroad, have they a representative here?

Mr. Wilson: I am not taking part in the case.

Mr. Walker: They have been present here, I don't know whether they want to testify or not.

Mr. Wilson: I don't want to testify, but Mr. Chadwick seems to have covered the Mississippi situation thoroughly.

Mr. Cotterill: Mr. Chadwick don't seem to know anything concerning the details of the interstate specific point to point adjustment in the Valley Territory.

Mr. Burchmore: I call the Commissioner's attention to the fact that he said he knew the rates and the history, why they were put in, what is it he is supposed not to know?

I said I had no definite knowledge as to exactly the movement into Memphis, but I do understand and believe that there has been and is now a very large movement of gravel and sand, or gravel at least from the Iuka district on the Southern Railway's Memphis Division, and from Camden, Tenn., on the Moblie & Ohio Railroad into Memphis; I know that the rate is 79 cents per ton, and I know that that is the present day equivalent of a rate of 50 cents a ton that was put in years ago to enable those pits to get into Memphis in competition with gravel that was secured from the river, and in competition with pits nearby Memphis (Rec., 703).

Q. Are there rail movements of many of these materials into Memphis originating on the Illinois Central Railroad? [fol. 288] Mr. Walker: Do you know?

Mr. Chadwick: I don't know that.

Mr. Walker: I have no objection to your asking him anything you want to, making him your witness, but he didn't undertake to testify about the movement from the Illinois Central Railroad, and this is not proper cross-examination. Furthermore, the rates to Memphis are not involved in the proceeding.

Mr. Burchmore: I object to this line of interrogation because the rates to any point in Tennessee are not involved.

Mr. Cotterill: The witness has tendered certain exhibits purporting to show certain interstate and state rates which he has selected, and I submit that it is proper for me to interrogate him to determine whether or not the showing he made was in fact representative of the rate level of an important moving tonnage in that territory.

Exam. Waters: If he knows, whatever a witness knows it is proper for him to testify, and if he doesn't know, he can say so, that is not a question of relevancy, it is a question of knowledge. Ask him your question (Rec., 704).

I do not know that there are any movements of these materials into Memphis originating on the Y. & M. V. I

didn't think there were any from points on the M. & O. There is none that I know of. My statement was that there was a movement from pits in the Iuka District on the Southern and certain movements on the N. C. & St. L., but I have no knowledge of any other movements into the Memphis District from any other line. I can't say whether they are published into Memphis specific point to point rates from points on other lines than those I have named (Rec., 705).

[fol. 289] I consider the intrastate movement of these products within the State of Mississippi comparatively large. My comparison is based on requests before the Mississippi Commission, which requested all carriers in Mississippi to prepare statements showing the actual movement of sand and gravel in Mississippi for four months, April, June, August and October, 1925, for use in a hearing now pending before that Commission; all of the carriers I understand prepared that information and sent it to the Mississippi Commission. That was where the information that I gave in my testimony came from. Now, I understand that someone else has all of those figures here that they could put them in the record, and we have no objection.

Q. Would you mind stating to me who has them?

A. The Mississippi Commission has them (Rec., 706).

So far as the M. & O. is concerned, it is my understanding that the carriers contemplate that the general mileage basis in the Valley Territory shall be adhered to without exception. I have said nothing about the crushed stone rates from the Columbia Quarry and Krause, Ill., into the Mississippi Valley. They are on a very much lower level than our proposed scale. The rates from Columbia and Krause have never been before the Commission under an I. & S. Docket that I have heard of. You probably refer to our recent advance in rates on gravel from Illinois to points in the Mississippi Valley which we advanced to protect the basis we are now offering here. A protest was made against that increase by some Mississippi Highway Commissioner and I asked the Interstate Commerce Commission by telegraph not to put in the rates, and we never heard any more from it, and they permitted the rates to become effective (Rec., 707).

[fol. 290] I don't recall the rate from those points to New Orleans. The advancing of those rates made them about 50% higher than the Mississippi rates. Prior thereto they were lower; they were put in at the urgent request of Mississippi authorities to assist their roadbuilding program. We have had no movement under those rates since then and don't expect to have any. Meridian is 140 miles north of Cairo; I should say the quarry is about 140 miles north of Cairo and these gravel pits are about 30 miles north of Cairo.

(Witness excused.)

B. F. MORRIS was thereupon called as a witness and, having been duly sworn, testified as follows (Rec., 708):

Direct examination.

By Mr. Mohr:

I have been employed in the Traffic Department of the L. & N. at Louisville, Ky., for the past 19 years, and am familiar with rate adjustment matters in the South generally and on the L. & N. particularly, as well as in the particular adjustment of sand and gravel involved in this proceeding.

The principal interest of the Louisville & Nashville Railroad lies in rates on sand and gravel from Montgomery to stations on its line in Florida and Mississippi, and rates on slag from Copperhill, Tenn., to points in Georgia, Florida and Mississippi, and in the rates on the movement of these commodities from off its line in Georgia, which I might add is very limited. Indirectly our company has a decided interest in the entire proceeding, as the rate level to be determined necessarily upon a statement of conditions will fix the measure of our rates in the territory south of the Tennessee River (Rec., 709).

[fol. 291] The L. & N. didn't join other major Alabama and Georgia carriers in the mileage scale on sand, gravel, stone and slag in 1916, and submitted no mileage scales to the Georgia or Alabama Commissions at that time. The L. & N. didn't concur in the mileage scales on sand, gravel, stone or slag, submitted to those Commissions by other carriers in 1921, but submitted a separate proposal which

was higher than those of the other carriers and was confined to a single mileage scale.

The scale proposed by our company to the Georgia and Alabama Commissions in 1921 reflected exactly the normal mileage scale which has been operated over our system for years except where departures have been necessitated by competitive forces (Rec., 710).

The departures from our normal mileage scale have not been numerous. The L. & N. decided this month to join other lines in proposing mileage scales submitted for application in the territory involved in this proceeding. We reached the conclusion that the necessity existed for uniformity in the adjustment on these movements as to the measure of the rate level, and it is now our purpose to modify the proposals heretofore submitted to the Alabama Commission. The scales now proposed are substantially lower than our prior proposals to the Alabama and Georgia Commissions, an exact comparison being afforded by my Exhibit No. 201.

(The statement was thereupon received in evidence marked "Defendant's Exhibit No. 201, Witness Morris.") (Rec., 711.)

As I said, the original proposal of the Louisville & Nashville Railroad only contemplated a single line scale. As I will later substantiate by other exhibits, this exhibit No. 201 in actuality affords a comparison with the normal rate adjustment prevailing on these commodities over the entire [fol. 292] L. & N. system, with the exception of intrastate adjustments required by orders of various state regulatory bodies. In other words, the scale shown as the scale originally proposed by the Louisville & Nashville Railroad in Column 1 of Exhibit No. 201 is our basic mileage scale observed for years, although it is not published as such in tariff form, and the single and joint line scales which we now propose will show the concessions we have made in order to submit a uniform adjustment in the territory here under consideration.

This proposed scale is to be applied on sand and gravel, crushed stone and slag, and if approved and adopted will substantially reduce the rates of the L. & N. from Montgomery to its stations in Mississippi and Florida, which

are the destinations in which we are directly interested here (Rec., 712).

The extent of the reductions in indicated by my Exhibit No. 202.

(The statement was thereupon received in evidence marked "Defendant's Exhibit No. 202, Witness Morris.")

With reference to the rates on slag from Copperhill, Tenn., I must say that Copperhill is located on the old line of the L. & N., formerly the Atlanta, Knoxville and Northern Railway, between Etowah, Tenn., and Murphy Junction, Ga., as is shown by my Exhibit No. 203.

(The statement was thereupon received in evidence marked "Defendant's Exhibit No. 203, Witness Morris.")

The red lines shown on Exhibit No. 203 indicate the destination territory affected by the I. & S. case 2470 (Rec., 713).

Mr. Mohr: Mr. Commissioner and Mr. Examiner, at the opening of this proceeding, reference was made to the fact [fol. 293] that there was a peculiar situation in respect to transportation conditions on the Atlanta Division old line; at that time it was our purpose to call as a witness at this hearing one of our transportation officials for the purpose of having him testify regarding the adverse conditions on that line; by reason of the fact that this hearing has taken up considerable time, and that it is the desire of all parties to terminate it as promptly as possible, we have obtained the consent of opposing counsel to submit in this record the testimony given by one of our transportation officials in a previous case, I have one copy of that testimony here at this time, which I intended to use as a guide in questioning our witness, I have telegraphed to Louisville, and there is now being prepared an ample number of copies for all parties, and I should like to offer this at this time with the understanding that by tomorrow or at the latest Monday, I will have ample copies of the testimony to give to the parties, if that is satisfactory to Your Honors.

Exam. Waters: Is there any objection?

Mr. Burchmore: What is the purport of that testimony?

Mr. Mohr: It deals entirely with the physical transportation conditions on the Atlanta Division old line, extending

from Murphy to Marietta, shown on Exhibit No. 203, and it will cover the direct and the cross examination, and I also agreed with counsel to make this statement in respect to that testimony, but if the witness is produced his testimony would be similar to that he made previously, with this exception, that the conditions referred to in this testimony that it is quite frequent for large rocks to fall down on the [fol. 294] track, or trees from the mountains, but that condition no longer exists, because all the trees have fallen down and the ground has settled very materially (Rec., 714).

Mr. Burchmore: I have no objection.

Exam. Waters: I think it would be better to offer them as an exhibit, you don't wish that incorporated?

Mr. Mohr: No, I offer that as Exhibit No. 217.

Exam. Waters: When will you have the other copies here?

Mr. Mohr: By tomorrow.

Exam. Waters: We will have it marked now with the understanding that you are going to follow it up during the hearing by the other copies.

Mr. Mohr: I am satisfied they will be here tomorrow or not later than Monday. Mr. Morris tells me they will be here tomorrow.

Exam. Waters: This exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 217, Witness Morris.")

We do not purpose to support the rates published in the schedule under suspension in I. & S. Docket 2470 because this month we decided to join the other carriers in their proposed mileage scales (Rec., 715), and in this instance we propose to apply the carriers' submitted single line scale on slag from Copperhill to Atlanta and stations on the Atlanta Division. I should say that we do not propose to apply that single line scale for the distances via Etowah, Tenn., via which junction the traffic is actually handled.

I should like to briefly refer to Exhibit No. 204, which is an excerpt from the decision of the Commission in I. C. C. Docket 7176, the case referred to from which the testimony [fol. 295] is taken, as mentioned by counsel.

(The statement was thereupon received in evidence, marked, "Defendant's Exhibit No. 204, Witness Morris.") (Rec., 716.)

Exhibit No. 205 is simply a statement showing the engine ratings on the Atlanta Division old line between Etowah, Tenn., and Marietta, Ga., and on the new line, which is the one over which the traffic is handled.

(The statement was thereupon received in evidence, marked, "Defendant's Exhibit No. 205, Witness Morris.")

Also, I should like to refer to Exhibit No. 206, which is an exact reproduction of our current routing circular covering the handling of traffic between points on the Atlanta Division, and which briefly stated provides that they do not handle traffic from Copperhill, Tenn., to Atlanta or points on our new line from Etowah to Atlanta, via the old line route, in fact it specifically provides for the handling of traffic from Copperhill to Atlanta and the other points in question *via* Etowah.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 206, Witness Morris.") (Rec., 717.)

Exhibit No 207 shows first the present rates on slag from Copperhill, Tenn., to all of our Atlanta Division stations, including the old and new lines.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 207, Witness Morris.")

The suspended rates apply to the stations Cartersville to Atlanta inclusive, and to stations on the old line, Keithsburg, Va., to West Oak, Ga., inclusive. I have shown in the first column rates on the basis of the scale which the carriers are submitting in this proceeding, and those rates are based first on the distance via Etowah, Tenn., to stations on the new line, and the short line distances via the old line [fol. 296] to stations on that part of the division. As you will observe, we are proposing reductions to many stations which are not actually involved in the I. & S. Proceedings (Rec., 718).

I probably should explain here, as I had intended to, that our rates on slag from Copperhill for several years reflected

the rate from Birmingham, Ala.; in other words, at the solicitation of the Tennessee Copper Company, and in order to permit a movement of slag from Copperhill to Atlanta, we established the same rates as were currently in effect from Birmingham to Atlanta. The rate of $1.30 is the present rate from Birmingham to Atlanta; however we are now advocating a mileage scale. The present rate from Birmingham to Atlanta on slag is $1.40 or within 4 cents of the rate we are proposing in our submitted scale; I am stating that from recollection. The L. & N. concurs in the mileage scale of the carriers for general application, the only special issue being what mileage shall be used from Copperhill to Atlanta and intermediate points (Rec., 719).

We are not asking a higher scale on the old line. I want that clearly understood. We are merely asking in the computation of distances to use the route via which the traffic is actually handled. Referring to Exhibit No. 203, the points of destination on that part of the Atlanta Division old line, shown in red between Keithsburg and Elizabeth, the distances from Copperhill are computed via the old line. My Exhibit No. 208 shows the existing rates on slag from Copperhill to points in Florida and Georgia beyond Atlanta.

[fol. 297] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 208, Witness Morris.")

The present rates from Copperhill to such points reflect the carriers' submitted scale, now concurred in by the L. & N., based upon distances via Etowah, Tenn., and our new line. (Rec., 720).

There is some movement to this territory from Copperhill but I don't know its exact extent.

My Exhibit No. 209 is submitted for the purpose of comparing the carriers' submitted scale in this proceeding with the rates on sand and gravel from producing points on the Ohio River, Frankford, Ky., Tarzan, Fla., and Bluff Springs, Fla., to destinations ranging I should say from 1 to 200 miles. The purpose of it is to show that the measure of the proposed scale is not unreasonably high, and I do know that there is a movement of sand under the rates from those origins into our territory, I have not undertaken

to show the movement in details. All of the points shown are on our line (Rec., 721).

(The statement was received in evidence and marked "Defendant's Exhibit No. 209, Witness Morris.")

The joint line scale is shown under the proposed basis because I wanted to show that the joint line scale proposed by the carriers here, when measured by our normal single line rates, is a reasonably low scale, in other words, the joint line scale here proposed is not greatly higher than our current single line rates, which do and have moved sand and gravel over our lines for years. The rates from the origins to destinations shown are not involved here, and we are not proposing these scales to apply from these points.

Exhibit No. 210 is a similar statement comparing the submitted scale of rates from Louisville to junction points in Central Kentucky where there has for a long time been a substantial movement of sand and gravel (Rec., 722).

[fol. 298] The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 210, Witness Morris.")

The statement shows the extent of the movement. They are all single line rates, as the routing shows under explanation of routes.

Exhibit No. 211 is a similar comparison of the submitted scale with the rates of the Louisville & Nashville Railroad on crushed stone from producing points to destinations on its line.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 210, Witness Morris.")

In this Exhibit I have shown the actual movement in cars for the year ended May 31st, 1925, where the information was readily available.

The succeeding exhibits, 212 to 216, inclusive, are like rate comparisons submitted in support of the measure of the carriers' submitted scale, and I do not believe they need any special explanation (Rec., 723).

Mr. Mohr: Mr. Examiner, we make formal offer of these exhibits Nos. 201 to 217 inclusive.

Exam. Waters: They may be admitted.

(The statement- were thereupon received in evidence, marked, "Defendant's Exhibits Nos. 212, 213, 214, 215, and 216, Witness Morris.")

Cross-examination.

By Mr. Cotterill:

I understood the testimony submitted by the A. B. & A. to indicate its desire to be permitted to make from producing points on its line to Birmingham a rate the same as made by your line for the further distance from Montgomery to Birmingham, but I have not considered the effect of that (Rec., 724).

[fol. 299] I may explain our own situation in this manner, and it will probably serve as the best answer I could give to your question. We are asking no exceptions to the application of the submitted scale, if you will allow me to use the expression, believing that it was lower than it should properly have been, and we in concurring in this scale, we purpose applying it literally except perhaps as to the maintenance of the Montgomery district, which includes shipping points just north and just south of the Alabama River and into the Southeast beyond 150 miles. That is our own position, and that being true, we naturally can not look with favor upon departures of that kind.

I believe you misunderstood me; I said it would lower our normal rate level, I don't know what the revenue effect would be. I don't want to be construed as making that statement, because I don't know whether it would lower it or not when applied to all of these commodities. I know this, from my rather extensive dealing with these sand and gravel cases, that our normal mileage scale is more nearly observed over our system than any railroad I know of. It is a fact, however, that we have very low rates. If we could increase the rates from Montgomery to Birmingham to the basis of the carriers' proposed scale, it would undoubtedly have an effect upon the revenue results, because there is undeniably quite a large movement, I don't know what the revenue effect will be, but I do know that our normal rate

level which is observed generally, would be reduced if it were applied over our entire system.

Other substantial movements on our lines, aside from those out of Montgomery and slag from Copperhill, were crushed stone, as shown by my Exhibit No. 211, where there is listed a movement of 154 cars from Franklin, Tenn., to Gallatin in a year's period. All of the movements are shown [fol. 300] on the exhibit, 858 cars from Whitehead, Tenn., to Nashville, Tenn. (Rec., 726).

Yes, that is limited to movements of crushed stone. I won't detail the movements of sand and gravel unless you insist, but I can't point out where the substantial movements are. I have pointed out a movement of upwards of 850 cars in a year from all those producing points, though not pointing to one destination, which I regard as illustrative of an important movement. Unquestionably the Montgomery District is the largest shipping point on our line, and I regard the movement from the Ohio River into Central and Eastern Kentucky as a movement of large importance (Rec., 727).

Where the movement of third importance would be I don't know. There is a substantial movement of slag from the Birmingham District to stations on our own line. It is true most of the intrastate movements in Alabama occur under point to point rates that are less than the Alabama mileage scale, but in so far as the Alabama State traffic is concerned, the L. & N. applies the so-called statutory rates only on sand; our normal rates apply on gravel. Where there are specific point to point rates, except in movements from the Ohio River to Central Kentucky, they are point to point rates based upon our unpublished basic mileage scale (Rec., 728).

By Commissioner Lewis:

Q. I don't quite understand, I thought from your testimony that the Louisville & Nashville Railroad was pretty hidebound in maintaining a fairly high standard of rates, but this last statement about rates from point to point conveys to my mind the fact that possibly you do make exceptions in which there is a material reduction from your standard rates, is that right?

A. Mr. Commissioner, there are very few exceptions to [fol. 301] our normal mileage scale on these materials all over the system, and those exceptions only occur where the force of competition has made it necessary. The answer to your question specifically is that we do not maintain many exceptions to our normal or basic mileage scale. When I said point to point rates from the Ohio River into Central Kentucky, I only referred to the fact that we have never adopted the plan of publishing mileage scales, where we could avoid it, we use our basic or unpublished scales, but name the rates in point to point fashion.

There are not many exceptions in number when you get south of Kentucky, down in Tennessee, Georgia, Alabama, Mississippi and Florida. The most notably exception is from the Montgomery District to the Birmingham District, and the Anniston-Alabama City Group (Rec. 729).

Yes, sir, we are proposing to eliminate even those exceptions and to apply the submitted scale, if approved by your Commission, from the Montgomery District to the Birmingham-Anniston District. Having agreed to the scale rather against our own views, we are not asking exceptions to it, and I suppose the effect of it would be in practice the maintenance of a maximum scale, although we do feel that if future conditions necessitated it, we could approach the Commission in the usual manner, and within reasonable limits offer to justify such departures as are made; I merely reserve that right because ignorant of future conditions; today we are asking no exceptions to the scale.

By Mr. Cotterill:

In making my reservation I have in mind that if another line attempts to put its producers into a market served by us from producing points on our line we want the right to [fol. 302] explain the circumstances to the Commission so as to take such steps as in our judgment would be necessary to protect producers on our line (Rec. 730).

Stated otherwise, it is the position of the L. & N. that the appropriate scale shall be literally adhered to, bearing in mind the possibility of some grouping of competitive points around a given destination; e. g., a large place like Birmingham, consisting of 10 or more named municipalities, with

the grouping of 2 or 3 producers, in our view properly grouped, which are next to each other in one district, where a mileage group might separate them. We have specifically stated that we propose applying the scale literally according to the mileage breaks in the scale.

By Mr. Burchmore:

Q. But from Jackson's Lake on the Louisville & Nashville Railroad a few miles north of Montgomery, would you apply the single line scale at Montgomery to points in Georgia reached we will say over the Atlantic Coast Line? (Rec., 731).

A. As I just stated, we have proposed, although it is not in this proceeding, to apply the Montgomery rate from the group of points around Montgomery, which includes Jackson's Lake on the one side, and some points as I understand on the West Point route or the Seaboard perhaps south of Montgomery, for the purpose of creating an origin group there.

Q. Never mind the purpose, if the mileage from Jackson's Lake by way of Montgomery and the Atlantic Coast Line to a station in Georgia makes a certain figure, you will charge a less rate if the mileage from Montgomery over the Atlantic Coast Line makes a less figure, is that it?

A. We will charge a less rate provided the tariffs go into effect.

[fol. 303] Q. But you will get the scale just the same?

A. If that is the way the scale works out, we will get if.

By Mr. Moffett:

The Georgia Railroad Commission did not, so far as I know, recognize any differences on the old line and the new line in the State of Georgia in fixing its freight rates.

By Mr. Brooker:

When I made these comparisons between Pennsylvania, Ohio and West Virginia points under the rates in our proposed scale, I did not consider the recent decision in Docket 15326, Pennsylvania Sand and Gravel, where there was established a maximum scale in that territory (Rec., 732). I have exhibits here prepared from the specific tariffs. I

had a number of exhibits on the Duquesne Scale in Pennsylvania, but in deference to the procedure I eliminated them as I thought it would duplicate testimony already put in by Messrs. Doss and Crane..

The rates shown here will be subject to revision based on our scale if they are in the territory covered by the scale. Though I did not undertake to investigate as to any movement from some of the origin points in Central Freight Association Territory, but I did know from another investigation that there was such a movement from New Albany, Indiana, into the North and I merely tried to select points which in my judgment were shipping points, and checked them against some of the lists furnished me, and I know that they are in fact shipping points, starting from Kankakee, Ill., to points on the New York Central, I don't know whether there is a specific movement there under these rates (Rec., 733).

[fol. 304] Q. Did you by chance discover a 77 cent rate from Kankakee, Ill., to Danville, Ill., for a distance of 107 miles?

A. No, sir, I did not.

Q. And I notice you show rates in one direction only, from Kankakee, and did not take the rates in the other direction, I was wondering if you left those low rates out separately?

A. I didn't see the rates.

Q. They are right in the same tariff from which you took these rates.

Mr. Mohr: You can offer them if you like.

Mr. Brooker: I haven't got them here, but I know they are in effect.

Mr. Mohr: We prefer that you put them in and give them the proper reference.

I did not hear Mr. Roquemore testify as to the movement of 50 cars a day from Montgomery to the Birmingham District (Rec., 734).

Q. If you have the information, I thought perhaps you had it, otherwise I think Mr. Roquemore's statement is sufficient of 50 cars a day 300 days in the year, assuming you had that much, which would be 15,000, would you say then

that a thousand cars from Junction City to Birmingham would be an invasion of the Birmingham market as against the Montgomery shippers?

A. Yes, I understand the question, but I don't feel like I am qualified to say what would be an invasion of the Birmingham market. If what Mr. Pope is getting at is this, does the Louisville & Nashville Railroad object to the proposals to maintain the Montgomery rate to Birmingham because of the movement of this particular quantity of sand, I would probably say no, but I have seen the Mont- [fol. 305] gomery-Birmingham rate and the Howard, Ga.-Birmingham rate and the Junction City-Birmingham rate used for the last five years in an effort to bring down our entire rate adjustment on sand and gravel, and for that purpose alone we do not care to see it continued (Rec., 735).

Our proposition is founded wholly on the idea that the scale cannot be maintained if it is not maintained by everybody.

By Mr. Burchmore:

Referring to rates shown on one of my first exhibits to points like Pass Christian, Biloxi and Gulfport, I don't think there is a production of gravel of any consequence at or near Bay St. Louis; that's my own judgment from the fact that the Montgomery shippers have represented to us that their competition was with Hattiesburg.

I am speaking from recollection, I don't know. I don't know that Hattiesburg would ship down there from the Gulf & Ship Island R. R.; I can't answer that conveniently. The Weston Company is located somewhere in that direction; we have had some difficulty in furnishing facilities for the Weston Company; I don't know just where they do ship from (Rec. 736).

I don't know whether there is a very large movement from our line of sand and gravel into New Orleans; I don't think there is any movement out of New Orleans; there is some movement from Montgomery to Mobile by barge as I understand it.

(Witness excused.)

[fol. 306] R. J. Doss was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

Inasmuch as the formal complaints put in issue rates from Chattanooga and Montgomery to points in Florida, I will briefly state the carriers' position.

I have already explained that the carriers have in mind revising the rates in Southern Territory on and north of the Seaboard's Jacksonville-River Junction line, observing the carriers' proposed scale. We have not yet definitely decided what changes by reason of that program will be made in the through rates or in the proportional rates to and from Jacksonville applicable on traffic to points in Florida south of that line. Generally speaking, and I believe it is true without exception that the present rates to and from Jacksonville on these commodities are, with the exception of slag, subject to the combination rules tariff more often referred to as the Kelley Tariff, under which the rates are net 30 cents a ton, the combination nets 30 cents a ton less than the local rates to and from Jacksonville. In revising the rates under the carriers' proposed scale, the new rates will not be subject to that tariff, and that will make necessary some readjustment of the rates, proportional rates to and from Jacksonville applicable on South Florida business.

The rates on slag are made today by deducting 12 cents a ton from the factors to and from Jacksonville, that is the proportional rate to Jacksonville is 12 cents less than the [fol. 307] rate to Jacksonville proper, whereas, the proportional rates south of Jacksonville are also 12 cents less than what would normally be the proportion. We will no doubt with the revision in the rates to Jacksonville proper make some such arrangement as to the proportional rates to and from Jacksonville on the Florida business.

Now, take gravel from Montgomery, the local rate to Jacksonville is $1.89, and is not subject to the Kelley Tariff, but we have continued in effect the former rate of $1.92 to Jacksonville for beyond, and that proportion is subject to the Kelley Tariff.

My Exhibits Nos. 218 and 219 respectively show the present rates from Montgomery and Chattanooga to representative Florida points applicable on sand and gravel.

Exam. Lewis: The exhibits will be received and made a part of the record, if there is no objection.

(The statement- were thereupon received in evidence, marked, "Defendant's Exhibits Nos. 218 and 219, Witness Doss.")

It is proper to say that from Chattanooga to Jacksonville the proportional rate that was intended to be made effective was through some error not published, and the rates shown in my Exhibit reflect what the rates ought to be had we published the proper rate from Chattanooga to Jacksonville; it is our purpose as quickly as the tariff can be changed to put that rate back into effect. Now, the general basis for making rates on all commodities to and from this South Florida territory is Jacksonville combination, and in practically all cases, the full rates to and from Jacksonville are applied. In some of the revisions which have been made recently as for example on livestock and brick, we have made the through rates based on Jacksonville combination slight differences under the full local rates (Rec., 739).

[fol. 308] These exhibits which I have filed show that the per ton mile earnings at present are very low; the rate on gravel from Montgomery to Tampa for example is $2.86 a net ton, and to St. Petersburg $3.16 a net ton, so far as I know, there is no movement of sand from interstate points to South Florida points, Florida itself being a very large producer and shipper of building sand. Both the Seaboard and the Coast Line consider their present rates on gravel from Montgomery to Tampa and St. Petersburg as just about the minimum for which they can afford to handle the business. There is a considerable movement of gravel from the Montgomery district through Mobile and by water from Mobile to both Tampa and St. Petersburg.

The $3.22 is the rate on sand, the A reference is explained in a footnote showing that gravel is $2.86, it comes about through a difference in the proportional rate south of Jacksonville, and that represents the effort we made to meet the competition on the gravel.

Now, as I say, if we did not think those were already the lowest rates, we would try to meet that water competition in order to secure a part of the business. I have taken Mr. Aldredge's Exhibit No. 1, Sheet 16, on which he has shown the present rates from Montgomery to five South Florida points, and have refigured the distances via workable routes. As I recall, the tariff is restricted so that the present rates would not apply via the routes over which he has figured his distances; certainly the proportion that he uses south of Jacksonville would not apply via any of the routes which he has shown. The rate, for instance, from Jacksonville to Tampa, that is applicable via Tampa only, that is when business moves through Jacksonville or through Live Oak via the Coast Line, it would not apply when the movement was through one of those junctions in [fol. 309] connection with the Seaboard and the Coast Line south of those junctions.

Now, to St. Augustine, the shortest distance over which the business is handled is 406 miles, and to Tampa 549 miles, and to St. Petersburg 557 miles, Sarasota 593 miles and Miami 735 miles. The Complainants have asked that the rates on these commodities from Montgomery and I assume Chattanooga also be made using the formula prescribed by the Commission in the Class Rate Case, Docket 13494 (Rec., 741).

Yes, I mean the formula referred to in the decision, which the Commission thinks should be applied on classes.

Now, I have tried to calculate what the rates would be from Montgomery on that formula, and it would make the following figure, on gravel, from Montgomery to St. Augustine $1.73, to Tampa, $2.21½, to St. Petersburg $2.12, to Sarasota $2.73, and to Miami $2.60½. With the single exception of Miami, all of those rates are lower than what the rates would be if the carriers' proposed scale be extended to cover those longer distances. And to Miami my exhibit shows the carriers' proposed scale extended would make $2.53, whereas I figure the formula would make $2.60½.

Now, the per ton per mile earnings under the rates which I understand the complainants are suggesting, to St. Augustine would be 4.3 mills per ton per mile, and to Miami 3.5 miles per ton per mile; to the other points, the per ton per mile earnings would be 3.7 or 3.8 mills per ton per mile.

We would consider those very low proportions to apply between points north of that Florida line, not to speak of applying it to points south of that line (Rec., 742).

[fol. 310] Now, it is proper to say that all other shipping points of these materials have the same relative basis as do Montgomery and Chattanooga, and from our experience in the construction of rates to and from Florida we don't think that it would be satisfactory to the shippers even to try to carry the rates to and from Florida on any other basis which does not approximately reflect Jacksonville combination. It is so much easier to arrange a satisfactory adjustment when you have only to deal with the one factor north of Jacksonville, the proportion south of Jacksonville being constant in all cases, it is a much simpler matter in the way of rate adjustment.

I have been connected with Southern railroads for 26 years and am familiar with this Georgia territory and all Southeastern territory generally, from a railroad viewpoint.

Considering the conditions of transportation, traffic density, financial conditions or otherwise, I do not think that there is much difference in the traffic and transportation conditions or otherwise, I do not think that there is much difference in the traffic and transportation conditions which would warrant a different rate level between points within Georgia as compared with traffic movements and rates across the State line between Georgia and surrounding States (Rec., 743).

No, I did not mean that to cover the territory south of the Seaboard's Jacksonville-River Junction line; I meant within what we call Southern Territory, but I did mean it as to the territory north of that line. I have handled a good many adjustments from time to time, involving the South Florida traffic, and I think even on these commodities most of the shippers prefer to have the rates made with some relation to the rate to Jacksonville (Rec., 744).

[fol. 311] Of course there are objections in some quarters to the system of Jacksonville Combination. I think probably the Class Rate case developed more objections to it than had ever come to our notice before, but when you have any competitive commodity going into Florida like coal or sand and gravel, I think the Jacksonville Combination is the ideal thing; I am not speaking now so much about

the measure of the rate because all shippers want low rates and all railroads want high rates. I am speaking of the simplicity of the combination rate system. Your adjustment is practically fixed in one rate. It is much simpler than to compute the short line mileages from any shipping point to a destination in Florida. If the rate structure into Florida is so worked out that it involves some form of combination on Jacksonville, then as between two different or competing origin points the relation of the rates to the given point in Southern Florida is controlled by the relative distances to Jacksonville (Rec., 745).

As between Montgomery on the one said and Savannah on the other, rates predicated on the short line distances to given points south of that Seaboard line would of course be in an entirely different level than if they were made on Jacksonville, using distances to and from Jacksonville; if the entire structure is based upon the relative lengths of haul to Jacksonville, as opposed to the relative short line mileages, your origin relationships are different in the two systems, because it would make a much greater difference than figured only to and from Jacksonville. The short line distance from Montgomery to Jacksonville is 369 miles and from Birmingham it is 444 miles, a difference of about 75 miles (Rec., 746).

[fol. 312] If the destination be Tampa, Florida, there would not be so very much difference between Montgomery and Birmingham, because to the extent that there would be a line other than through Jacksonville shortening the distance from Montgomery, that line would also be available for shortening the distance from Birmingham.

Q. Well, we will not press the specific points further, but you fully concur in the thought that the origin relationships and for that matter destination relationships—no, that wouldn't be true, but certainly the origin relationships are different dependent upon whether the charges are made by a combination on an intermediate point, and as what they would be if made on the basis of the relative distances into the destinations in Florida?

A. There would be a difference certainly as between points in Alabama on the one hand and South Carolina on the other, I think, because of course that would not be true to points on the East Coast, as in every case they would be figured through Jacksonville (Rec., 747).

Yes, the short line mileages would always work through Jacksonville and that would also be the case to stations on the Seaboard and the Coast Line where the rate south of Jacksonville is through Jacksonville today. All of the traffic to the East Coast would certainly move through Jacksonville. Now, both the shipper and the Coast Line have to some extent alternate groups which would not carry the business through Jacksonville necessarily. We would use the Dupont-Lakeland line for all the business that we can handle that way, and the Seaboard has a route in connection with the G. S. & F. through Hampton, which they use alternately with their own route through Jacksonville (Rec., 748).

[fol. 313] I do not think the Seaboard's construction into Miami and to Palm Beach and that vicinity has reduced the mileage to the East Coast; I do not believe the mileage via the Seaboard's new line is as short as via the East Coast route. The Coast Line is considering—I believe has filed a petition with the Commission for a certificate of public necessity,—the construction of a short line between Montecilo and Berry; however, that is merely a relief line to reduce some of the congestion on our other lines (Rec., 749).

(Pages 750 and 751 omitted as argument of counsel.)

I would like to call attention, if you take any commodity that is moving under a mileage scale that is as low as any of these scales on sand and gravel and stone, you can take even the carrier's scale, and while it pays for the maximum distance of 460 miles something like 4.2 mills per ton per mile, that scale extended at the same rate of progression as was used for the distances say from 300 to 460 miles, will at the further distances yield rates that are just an absurdity, because as I pointed out, you extend our own scale up to 1,000 miles, and it will not pay but about two or three mills per ton per mile. That is true with most any scale that is designed to move low grade commodities for short distances or for distances up to three or four hundred miles. And just to show you how it works out, take on citrus fruits, where the Commission fixed a scale of rates to apply from Florida points to Jacksonville in making through rates to interstate points, you can take that scale and extend it at the same rate of progression for the upper distances in the scale or for the lower distances in the

scale, and it will actually reduce the rate on oranges from California to the East, as low as that rate is.

[fol. 314] As to the question of the consequential measure of the total charge received, that was sought to be taken care of by inflating the scale in proportion to the mileage of the haul in Florida (Rec., 752).

I think, of course, the important thing about this is the rate that you have established from Montgomery to Tampa, that is the thing of importance, whether it is obtained on Jacksonville combination or by using the scale. Now, using the formula that the Commission laid down in the Class Rate Case, as best I can figure it, the rate from Montgomery to Tampa on Gravel would be $2.11½; now, there is something wrong somewhere about that total, because it would only pay about 3½ mills a ton per mile, 3.8 to be exact. Now, whether that is in the scale itself, which we think is one of the important elements, or whether it is in the differential, you add to cover the haul in Florida, it just brings about too low a total (Rec., 753).

By Mr. Burchmore:

Q. I say, what fact is there that makes it appropriate to have that sort of rigid scale, with a sudden dropping of the scale as has been suggested?

A. That is a long story, I can give it to you if you want it, but the Commission has passed on it hundreds of times, it goes back to the beginning, the Jacksonville combination has been the basis to and from Florida ever since the railroads were first built.

Mr. Burchmore: I don't want to start anything, but if I may explain the point in my mind, the Atlantic Coast Line says you have got to have a rigid scale, you can't depart from it, but you say when you come to a haul from a point in Georgia or Alabama to points in North and South Carolina and Florida beyond a certain distance, then it is neces- [fol. 315] sary to have specific through rates rather than rates on the mileage scale, is there any fact that will justify such a condition of affairs? (Rec., 754).

Mr. Gwathmey: I object to that, it would not be thought necessary in this matter to go into an extended discussion of the reasons for the general application of what the carriers actually refer to as the Jacksonville combination

basis. We have an enormous mass of data here that can be put in on that subject, but my own belief is that the opinions of the Commission itself are so full of information as to that, I have the cases and will be glad to submit extracts from them here if necessary, that it really was not worth while to encumber this record with all of that data. My understanding is that the only issue here as to these South Florida rates is whether the rates on these particular commodities from Chattanooga and Montgomery respectively to South Florida are unreasonable. We have undertaken to show by these exhibits that, laying aside the question of how they may be constructed, whether on Jacksonville combination or on any other basis, the present rates are exceedingly low, as shown by the ton mile earnings thereunder, and further that the rates on the basis proposed by the complainants are entirely too low. That is our whole position on this subject (Rec., 755).

Exam. Waters: It appears to me if reasonable rates are prescribed it is not a matter of so much concern how they are made.

Mr. Burchmore: I think it is fair that I have an opportunity to bring out the facts, as this Commission suggests, but here it is asked to say that you shall substitute one scheme for another scheme, that hasn't anything to do with the amount of the rate itself, that is what you are asking for, because you are asking that you shall have a mileage [fol. 316] scale up to a point in Florida, and then beyond that regardless of the amount that that would produce, you want to substitute combination.

Mr. Gwathmey: May I ask whether you are representing the shippers in this case who ship from Montgomery or Chattanooga into Florida?

Mr. Burchmore: No, but I am very much interested in the principle that you are trying to put upon us.

Exam. Waters: Don't let's get too far afield on principles.

Mr. Burchmore: If there is not going to be any argument at all on one side of this case, I will not ask to make an argument, but if you are going to take up a record of arguments by Mr. Gwathmey and Mr. Cotterill as to why a mileage scale is to be put in, I ask permission to put in a few words of argument on the other side; if you will cut out all arguments on the part of other counsel, I will make no effort to make any argument at all (Rec., 756).

Mr. Cotterill: To the extent that I did overlap, I apologize to both the Commission and to counsel. My only explanatory comment is that I was seeking to avoid the realm of the historical situation of the Jacksonville System, just as Mr. Gwathmey.

(Witness excused.)

Mr. Gwathmey: As far as I know, that concludes the case for the carriers on the direct presentation.

C. R. Moffett was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

Mr. Moffett: As to my qualification, I will state that I [fol. 317] served with a number of Southern carriers in the traffic departments as Chief Rate Clerk and Commercial Agent, also the old Southeastern Freight Association, and for the past seven years in industrial traffic work.

I will offer Exhibits Nos. 220 to 224, inclusive, and with a view to hurrying ahead with this testimony, I will cut it very short, because I believe the exhibits are self-explanatory to a large extent.

Exam. Waters: The exhibits will be received if there is no objection (Rec., 757).

(The statements were thereupon received in evidence, marked "Intervenor's Exhibits Nos. 220 to 224, inclusive, Witness Moffett.")

Mr. Moffett: Dockets 17763 and 17764 attack the rates on gravel from Chattanooga to points in Georgia and Florida under Sections 1 and 3 of the Act, and bring into issue the rates on slag from Copperhill, Tenn., charging that Copperhill slag competes with Chattanooga gravel; that is true, and we claim that the Copperhill slag also competes with the Birmingham slag and the Montgomery gravel, and crushed stone produced at many points in Georgia, South Carolina and other southern states. The purpose of these exhibits is simply to show that the Copperhill slag has been discriminated against, and we have been unable to meet the competition at points in the territory involved. These

exhibits are self-explanatory to a large extent, and show conclusively that the Copperhill slag is being discriminated against, that is in the sense of preference and prejudice under Section 3 of the Interstate Commerce Act.

[fol. 318] The chief competition of course would be with the Birmingham slag, and the Chattanooga gravel, and also sand and gravel produced over at Fairmount and Bolivar on the main line of the Louisville & Nashville Railroad, then over on the old line at such points as Mineral Bluff and Whiteside, Ga., and possibly from the marble mills around Nelson, Tate, Bellground and Canton, Ga., what might be termed as crushed marble, and also from Ladd's, Ga., which is not shown on the map; it is close to Atlanta, on the Seaboard Air Line.

The shipments have been moving very largely on the old line and perhaps on the main line of the L. & N., to Atlanta or south; there have been some at Murphy, N. C., and a small tonnage into the Carolinas. They have not been able to market this slag to any extent on account of the differences in these rates. See Exhibit No. 223.

Mr. Walker: I want to object to it (Exhibit No. 222), in the middle of that page is a statement there dealing with costs, just an arbitrary statement without any basis whatever, and I move that it be stricken from the exhibit if the exhibit is received (Rec., 759).

(Thereupon there was argument between Mr. Moffett and Mr. Walker in which Mr. Gwathmey joined Mr. Walker's objection, with comments by Commissioner Lewis, and finally—— (Rec., 760).

Mr. Walker: I move that the statement be stricken from the record until we get a ruling on the exhibit.

Commissioner Lewis: I don't believe this thing has any weight whatsoever, it will not hurt this record for it to go in.

[fol. 319] Mr. Walker: It is a conclusion of the witness on a study made by Dr. Lorenz, of course.

Commissioner Lewis: I will rule it out, and you can make your objection, which will be noted.

Mr. Moffett: Do you rule the entire exhibit out?

Commissioner Lewis: No, just that part of it (Rec., 761).

Mr. Ribe: I object to Exhibit No. 221 unless the witness is qualified to testify as to the weights of the commodities he lists on that exhibit.

Mr. Moffett: They are generally accepted in the Tennessee district, some of those weights were verified through invoices and through other sources and records, and were also confirmed by a letter from the United States Department of Agriculture in Washington and the Road Department with slight variations, possibly 50 or 100 pounds in one or two of them, otherwise they are correct as far as any one knows, and all the contractors that I know of in our section use those weights.

Exam. Waters: That will be allowed to go in, and the objection will be noted.

Mr. Moffett: As long as he has brought that out, I want to say this, you will notice the Copperhill slag weighs 3,100 pounds to a cubic yard, which is 135 percent of the iron blast furnace slag, and that is a handicap that it must be sold under.

Now, as to Exhibit No. 223, in the two dockets, 17763, and 17764, in which Copperhill was brought in, they claimed that the rates were preferential of Copperhill as I see it, and prejudicial against Chattanooga, while just the reverse of that situation was shown; I am dealing with the situa-[fol. 320] tion south of Atlanta, I judge Mr. Cotterill and Mr. Porter will handle the I. & S. Case from Copperhill to Atlanta proper (Rec., 762). And from this exhibit you will note that the rates from Copperhill as they exist today are from 10 to 36 cents higher than the current rates from Chattanooga on gravel, whereas the short line distances in nearly all cases, with the exception of two or three more as noted, the short line distance from Copperhill is uniformly 21 miles less than from Chattanooga, Tenn.

Now, as to the last exhibit, 224, that exhibit is simply to show why the Copperhill slag can't go into the state of Florida. Tampa, Fla., is shown on the right there as representative of the Southern points, because large quantities of slag have been used in and around that territory. And where the slag rates are shown on this exhibit, the average distance to Jacksonville, Fla., from those points, that is except from Copperhill, is approximately 452 miles, and the average slag rate to Jacksonville from all those points is $1.78 per ton, as against the published rate from Copperhill to Jacksonville for beyond of $2.25 per ton. The distance

from Copperhill to Jacksonville is less than the average distance from the competing points, yet the Copperhill slag rate is 47 cents per ton greater on an average. Those conditions will work out about the same to Jacksonville for beyond, which shows conclusively that the Copperhill slag is discriminated against in entering the state of Florida.

That is about all I have to say in regard to that exhibit (Rec., 763).

[fol. 321] Cross-examination.

By Mr. Brooker:

The exhibit figures the mileage from Columbia, S. C., to Jacksonville, Florida, via the Southern Railway. As to whether the Southern Railway has a direct line from those points without using the Coast Line to Jacksonville I can't say; it is a traffic arrangement I am not familiar with; I know they publish it in their mileage scales and mileage tariffs on file with the Commission as a one line haul. Without checking it I can't say that the Seaboard's route is shorter than the Southern's. I worked the exhibit up hurriedly to get to Atlanta. I may say that I now notice that in cutting the stencil of this exhibit No. 224, the tariff authorities have been omitted, I don't know why, but I can give them to you from memory, with the exception of one tariff.

Commissioner Lewis: You had better read that in (Rec., 764).

Mr. Moffett: From Copperhill, L. & N. Tariff I. C. C. A-15338; from Birmingham, Glenn's Tariff I. C. C. A-331, from Montgomery, Glenn's Tariff A-494. From Elberton, Columbia and Pacolet, Southern Railway Stone Tariff No. 4, I. C. C. A-9979.

(Witness excused.)

G. D. Lott was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am Secretary and Treasurer of the Palmetto Quarries Company, Columbia, South Carolina, and in this proceed-

ing speak for it, and also the Weston & Brooker Company, also of Columbia, and the Southern Crushed Stone & Gravel Company, of Park Hill, S. C., on the Southern Railway. [fol. 322] The Columbia quarries have been in operation for about 25 years and these companies produce and sell crushed granite or crushed stone. The plant capacities are, for Weston & Brooker, 25 cars per day; and for Palmetto, 25 cars per day; and for Southern Crushed Stone & Granite Company, 15 cars per day (Rec., 765).

Crushed stone and granite competes with gravel, slag, chats, and clay gravel. Our minimum price for crushed stone is $1.25 per ton f. o. b. our plant the past six months; our maximum price is $1.75 per ton. We cannot produce and sell our product at an average price of less than $1.50 per ton f. o. b. our plant. The competition of gravel and slag with our product is that the former are sold at much lower prices than crushed stone on an equal basis of freight rates so that both slag and gravel have a decided advantage in price. With respect to slag, even at the same level of freight rates, we are handicapped because of the lighter weight per cubic yard of slag. A given job requires less tons of slag than when crushed stone is used.

The gravel competing with our product originates chiefly from the Montgomery district, and its destination territory is South Carolina, Eastern Georgia, and Florida (Rec., 766).

The competing Montgomery gravel is destined to Charleston, S. C.; Savannah and Augusta, Ga., Jacksonville and many other points in Florida. We have lost contracts on which we have quoted prices on crushed stone at the points I have mentioned. The slag which competes with us originates in the Birmingham District and the destination is the same territory I named for the gravel competition. We have lost business to slag from the Birmingham District, at destinations of Charleston, Newberry and Orangeburg, S. C., Augusta, Savannah and Brunswick, Georgia, and [fol. 323] Jacksonville, and many other points in Florida. Newberry, S. C., is 43 miles from the Columbia plants. Our freight rate is 79¢ per ton; we secured an order on the city paving work at that point and had shipped some 15 or 20 cars when the slag shippers from the Birmingham District made a more attractive price, taking the slag rate into consideration, and took the job away from us. We were

forced to reduce our price below our average selling price in order to regain this particular order (Rec., 767).

Florida was once one of our best markets, but during the past few years we have shipped very little to Florida points, and what we have sold there has been at a premium. The Montgomery gravel and the Birmingham slag is being sold in large quantities at Jacksonville and other points in Florida. The sales representative of the Weston & Brooker Company at Jacksonville purchased 1,100 cars of gravel from one company in Montgomery in 1924, and an equal amount of more during ten months of 1925, our own sales representative at Jacksonville purchased at least that much or more. By premium, I meant they paid more for our product delivered on the job than they did for the gravel and slag. I have seen the proposed scale submitted by the complainants in this proceeding, and if the scale on crushed stone, slag and gravel is established it will greatly reduce our production and sale, because the low rates for the long hauls and the relatively higher rates for the shorter hauls will, when applied to the lower priced gravel from Montgomery and slag from Birmingham, make it impossible for us to sell our stone in even our home territory, and by that I mean within a radius of 50 miles from our plants (Rec., 768).

We shipped 110 cars to Florida during 1925.

[fol. 324] Cross-examination.

By Mr. Gwathmey:

I don't know that there is any objection on the part of the interests I appear for to the construction of rates into Florida on combination by the use of certain separate factors to and beyond Jacksonville.

By Mr. Walker:

I was talking about the shippers' proposed scale.

By Exam. Waters:

Q. How about the carriers' proposed scale?

A. I really haven't seen the carriers' proposed scale, Mr. Examiner (Rec., 769).

By Mr. Cotterill:

The approximate distance from Birmingham to Columbia, S. C., is 400 miles, and from Montgomery to Columbia I believe it would be a little greater. I said that the complainants' scale for hauls of 400 or 450 miles would eliminate us as a factor beyond 50 miles from Columbia (Rec., 770).

The rate from Columbia, S. C., under the shippers' proposed scale for a haul of 50 miles would be about 70¢ I believe. The value of our product ranges from $1.25 to $1.75. I believe slag prices were given here as 50¢ to 90¢. I don't know about the average price. With a price of 65¢ per ton on slag at Birmingham plus a freight rate of $1.70, the delivered price would be $2.35 a ton (Rec., 771).

Q. Your freight rate would be 75¢ per ton?

Exam. Waters: That is to where?

Mr. Cotterill: For a haul of 50 miles I think it is, or is it 50 to 60—I missed it one block, it is 80¢ for 50 miles, that leaves $1.50 per ton as your delivered price, I mean as a margin for your quarry price?

[fol. 325] A. Yes, sir.

Q. Now, you say you want more than $1.50 for your product?

A. No, sir, I said an average of $1.50.

Q. Well, if you want an average of $1.50, and that rate adjustment is such that you get it to that point, wherein would you be eliminated from it?

A. Beyond that we would be eliminated, would we not? Our distance to Jacksonville is lower than from Birmingham to Jacksonville.

Q. With a price of $1.50 f. o. b. your shipping point, plus your rate to Jacksonville, is your distance sufficiently less than the distance from Birmingham to overcome the price of the competing article that sells for only 65¢ per ton? (Rec., 772).

A. Well, I would answer that this way, for the past few years we have shipped very little anyhow into Jacksonville, and as I have already said, we once shipped a great deal into Jacksonville.

Q. Starting with a disadvantage in price of approximately one dollar per ton, is there any system of freight

rate construction that can possibly give you a distribution very far?

A. Well, I am not a rate expert, but I doubt that there is.

Mr. Cotterill: I agree with you.

Redirect examination.

By Mr. Brooker:

We can't exist unless we can make our material average $1.50 at the plant. On a given job within 50 miles of our plant, when crushed stone is used, they require more tonnage of that commodity than when slag is used (Rec., 773). [fol. 326] Even those we might by the use of the price of $1.50 make the same delivered price on crushed stone, we are at a disadvantage in regard to the weight of those materials.

(Witness excused.)

W. L. Smith was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I am President of the Memphis Sand & Gravel Company, with headquarters in Memphis, where I reside. My company is engaged in the clay gravel business, located at Holder, in Northeastern Mississippi, shipping point Iuka. We have another plant in Middle Western Tennessee, near the Tennessee River, on the main line of the N. C. & St. L. Ry. We have another plant on the main line of the I. C. R. R., about 20 miles east of Paducah, Kentucky. That is also on the Tennessee River. The Iuka plant is on the main line of the Southern en route from Memphis to Washington (Rec., 774).

The Kentucky plant is on the Louisville Division of the Illinois Central, just out of Paducah at Gravel Switch, Ky. The capacity of our Iuka plant is about 40 cars a day; our Camden plant (Middle Western, Tenn., on N. C. & St. L.) is about 50 cars a day, and that of our Gravel Switch, Ky.,

plant is about 100 cars a day. From time to time we sell and load large quantities of gravel for railroad ballast, but aside from that use, the principal use or purpose for which our material is sold is good roads and streets and municipal purposes. We produce only the clay gravel; but no sand. All of our commercial gravel output, so far as shipments are concerned, is for railroad and street work (Rec., 775).

[fol. 327] The only other gravel we have is ballast; I didn't mention the tonnage or output of it just now. I am President of the Tri-State Road Material Association, which is an association of the gravel and sand producers in the Mississippi Valley for mutual benefit, whose plants are located in Mississippi, West Tennessee and West Kentucky. The Association's general objects are looking after freight rates before the Commissions and after the car supply and matters of mutual interest to members of the Association. There are quite a few members of the Association that produce washed gravel and washed sand.

Answering your question for some of the important producing places in Mississippi, with railroad location, there is Columbus, Miss., on the M. & O. R. R., and the Columbus & Greenville R. R., about the middle eastern edge of the State, there are four plants there, three of them are washed gravel plants and one clay gravel plant (Rec., 776). On the Frisco R. R., just as it enters the state from Alabama, there is a washed gravel plant; and there is one just inside the State of Alabama at Solgent, Ala., also on the Frisco R. R. On the Illinois Central as it comes to Birmingham en route to Chicago there is a washed gravel plant located at Golden, Mississippi, near the Alabama line; also another plant located at Spruce Pine, Ala., just inside the Alabama line. There are two plants located on the main line of the Southern Railway, one of which is my own, just as it enters Mississippi from Alabama, in the extreme northeastern part of the state, at Iuka. The other plant there is the Allen Gravel Company, with a capacity of about 25 cars a day (Rec., 777).

If you come from Montgomery direct over two lines of road, the Western of Alabama to Selma and the Southern Railway from Selma to Meridian, that would be the short [fol. 328] line; Meridian is about the first town of any importance in Mississippi. There is no plant at Meridian but

in the general vicinity there are four plants at Columbus on the M. & O. R. R., less than 100 miles away, and there are two plants located on the New Orleans & Northeastern R. R., that are about 85 miles from there en route towards New Orleans; that is, at Hattiesburg. There is a plant on the M. & O. R. R., a short distance south of Meridian, at Waynesboro. There is also a plant down there near Bay St. Louis, towards the southern boundary of the state, just off the main line of the L. & N., on a little short line (Rec., 778).

I don't think there is any considerable production and shipment of sand and gravel from Mobile, Ala. Brookhaven, Miss., is near the southern boundary on the Illinois Central's main line and that is a large producing point, both of clay gravel and washed gravel, and they also furnish a lot of ballast there. On the western side of the state, there is a large plant at Greenville, Miss., owned by the Greenville Sand & Gravel Company, and they have also a pumping plant that pumps gravel out of the Mississippi River. That is just washed gravel. They have three washed gravel plants at Memphis, also a river proposition, which do not produce *caly* gravel (Rec., 779).

Whether Memphis produces sufficient gravel for its own uses, depends upon the building program; to illustrate, about two years ago Memphis had an abnormal building program of something like $45,000,000.00, and during that period they brough- in gravel from Paducah, Ky. There are two large plants there that I don't believe I mentioned [fol. 329] —washed gravel plants—and they shipped some gravel in, quite a lot from Greenville and Golden, Miss. They also shipped in crushed stone from near Nashville, Tenn., just beyond the Tennessee River on the main line of the N. C. & St. L. They also got crushed stone from Williford, Ark., on the Frisco R. R., and there are one or two plants located on what is known as the Corliss Ridge; that is a line of hills that forms the demarcation, you might call it, of the Delta from the tableland.

In a very general way, the utility of clay gravel for use in road and street work is this: The base is prepared as in all of those construction propositions, and then the gravel is put down generally about 8 inches thick, and they put down about 4 inches of that in what we call the cement gravel, or the gravel that is sized, all of the large gravel being

taken out of it; that is rolled and generally speaking that gravel carries its dampness so that it sets up very promptly, and of course in a very large proposition they may have to use a little water, but it is a natural cementing gravel and sets up very quickly (Rec., 780).

The clay acts as a binder. Washed gravel is used when they are making cement or concrete roads. Along the Tennessee River and along the eastern portion of the State, there are a number of clay gravel and washed gravel plants. In that valley I think there are about 17 washed plants and about 15 clay plants, that is, in what we call the valley, running from my own plants on the Ohio River through to the Louisiana line. There are 12 washed gravel plants in Mississippi and 10 clay. Normally, the selling price of clay gravel is 35¢ to 50¢ per ton at the plant. Now, in specially prepared cement gravel, that runs up as high as 70¢ (Rec., 781).

[fol. 330] When you get down to where you overlap into competition, it is according to how hard the times are and how much your competition is; those are things that are based like all competitive business. From my experience and knowledge of the business, the representative normal price on washed gravel and sand for Mississippi Valley runs about 65¢; sometimes, as in the cases that you spoke of a while ago it will get down as low as 50¢ per ton. Generally speaking, the two sell for about the same price. I suppose there are exceptions to all rules. You take in the river gravel plants, where the producers have their barges on each side, and where they have an excess of sand for which they would not have a sale, all they have to do is just to move the sand barge and let it flow back into the river; there is no extra cost of removal of that sand, as would be the case in a land operation, where you have to bring it all to your plant and either have to ship it or dispose of it otherwise (Rec., 782).

We ship a large quantity of clay gravel from our Iuka plant in Northeast Mississippi on the Southern Railway, to destinations in the State of Mississippi. Most of that tonnage moves from Iuka to Mississippi destinations by interstate routes. One of the principal interstate routes used on that tonnage is the Southern Railway, that runs from Iuka direct west to Memphis. That is the main line, where it has a terminus, and there we ship it down to what is

known as the Y. & M. V., which of course is a part of the I. C. R. R.; and some down the I. C. R. R. into the Delta (Rec., 783).

We have quite a large business down into the Delta, where there is no macadam; it is an alluvial country, of course formed by the overflow. There is no road gravel produced beyond Memphis and there is a large tonnage from Iuka by the Southern Ry. to Memphis and the Y. & M. V. to the Delta (Rec., 783).

[fol. 331] The interstate rates by that road are practically the same in some cases as the intrastate rates from Iuka to the same Delta destinations; in other words, if we go through Memphis down into the Delta down much past Clarksdale, Miss., we then run into the intrastate rates that come around by way of Corinth and across the G. & G. Railroad into the Delta, which runs over to Greenville. In some cases the interstate routes are longer than the state routes.

Q. Except for substantial differences in mileage, would you say that the rates from Iuka by the interstate routes to Memphis are substantially on the same level or lower than the intrastate rates?

A. Practically so to the Delta country.

Those interstate rates have been established voluntarily by the railroads for years and years; they were built up from General Order No. 28 and the following increases after that (Rec., 784).

We use the interstate route by way of the Southern Railway to its junction with the Gulf, Mobile & Northern, just north of the Mississippi State line thru Middleton, Tennessee. With few minor exceptions, the interstate rates by that route are practically the same as the intrastate rates to the same destinations; there may be one or two instances where there would be differences.

Mr. Burchmore: We ask your attention, Mr. Commissioner, to the fact that neither the Southern Railway nor the Y. & M. V. Railroad were named as defendants in the printed petition, and that the complaint does not attack the interstate rates from Iuka, Miss., to Mississippi destinations, but is limited in express language to the intrastate.

We ship gravel from our Camden plant to points in

[fol. 332] Mississippi and the rates in effect (Rec., 785) are on the same level because Memphis is used as a competitive point and from there on, of course, the proportion is exactly the same. Camden is on the main line of the N. C. & St. L. If a producer of gravel at Montgomery shipping to a point in Mississippi, I should think with the single line haul of the M. & O., which is about 180 miles to Columbus, the first producing point, the direct line from Montgomery would probably be when we strike the center of the State. You understand that the hill lines in Mississippi are not the prosperous portion of the State. The Great Delta of Mississippi is the bulwark of that State. In endeavoring to reach the markets of Mississippi over that route, the Montgomery producer as he enters Mississippi would run right jam into four plants at Columbus, whose normal production I should say would be around 400,000 tons. I imagine, however, it would whatever they wanted to make it because there are whole fields of it there and it just depends on how many shovels and washing plants are put in (Rec., 78[illegible]).

That section of Mississippi has a large potential supply there but I can't say how it compares with the Montgomery area. The next road by which Montgomery would enter Mississippi would be, going north, through Birmingham and up the Frisco past Amary, Miss., and as Amary is right on the line half way between Birmingham and Memphis, they would run into two gravel plants, one washed gravel and one clay gravel. Montgomery might also enter Mississippi by coming up to Tuscaloosa on the M. & O. and down the A. G. S. to Meridian, or over the two-line haul of the Western of Alabama to Selma and over the Southern from Selma to Meridian; that would be the most direct western route. The A. & V. is an important link in that route from Meridian to Vicksburg (Rec., 787).

[fol. 333] Going into Mississippi through the southern end Montgomery would use the L. & N.'s main line through Mobile, coming out by Gulfport in the Coastal section. By all of these routes, the Montgomery product would pass several producing centers on the border of Mississippi; the four Columbus plants would be less than 400 miles away; the two Hattiesburg plants would be about 85 miles away. Of course southward towards Hattiesburg, the mileage would naturally be reduced, and as I understand the A. & V.

is not named in this complaint they would run into Brookhaven and the Komard plant near Jackson and the Crystal Springs plant right at Jackson. The Columbus & Greenville Railway is one of the intrastate railways of Mississippi and I think there are important gravel producing points on that road. I think there is a small plant at Donnelly on the C. & G., and of course the western terminus of the C. & G. is at Greenville, where they run into a big washed gravel plant at the Mississippi River (Rec., 788).

The New Hope plant and also the three washed gravel plants at Columbus are within the switching limits of the C. & G. with a single line, but when they strike the Y. & M. V. they would take the two-line haul.

I have had a great deal of experience in building railroads and my brother and I built over 800 miles in Mississippi. We built 2000 miles of railroad during our construction (Rec., 789).

In 1898 we raised and lowered the grades of the I. C.'s main line from Jackson, Miss., south and going out on the Y. & M. V. to Yazoo City. Afterwards we double-tracked the I. C.'s main line from south of the Ohio River to New Orleans. We built over 100 miles of the Delta railroads in the Mississippi Valley and 50 miles of the Gulf & Ship Island into Jackson, and another 50 of the Great Northern [fol. 334] road into Jackson, Mississippi. We built 400 miles of what was known as the M. J. & K. C., now known as the Gulf, New Orleans and Mobile. From this construction work I think I have acquired some considerable knowledge of the topography of the country and the character of the railroads with reference to their grades, curves, and weight of rail. I also built 75 miles of the A. B. & A. R. R. in the Georgia territory. That is the only one in that particular section that we built. We built, raised and lowered the grades and widened the banks on the L. & N., and we built roads for the Southern Railway (Rec., 790).

I have also worked for various railroads in different parts of the country in reconstruction or regrading. The I. C. in 1898 began to readjust its grades. The lines we built through the Delta, and over which their main traffic passes today, is based upon 26/100 of one per cent, practically a water level. The maximum engine tonnage pulled by the I. C. through that country is 8400 tons to the train, which means it can pull over 150 cars loaded through that

country, all they can hang on to. Within the past three weeks I had to wait for a freight train in the Delta and it carried 110 cars. Now that same engine in the Knoxville Division of the Southern Railway will pull about 1400 tons, or, if she is what is known as a super-powered engine, she would increase that about 20% (Rec. 791). In other words, one engine and one crew will pull in the Mississippi Valley section of the I. C.'s main line three times the tonnage of any other railroad that has a maximum grade of 1%, and most of them in the southeast run over that.

The main line of the L. & N. on Sand Mountain going north out of Birmingham until very recently was 2%. It was reduced when they made that cut-off there. I made a [fol. 335] bid on it and missed it, and of course to do that had to look it over and I learned something about it.

When I have spoken of the I. C. I have coupled the Y. & M. V. and I. C. together. I also built what is known as the Yellow Dock, named from the Yazoo Delta, and that is the road they pull all of their main line freights through today, their low level road, and is the one I mentioned when I spoke of 26/100 of 1%. They are the portions of what we call the main line, what we call the Granada line, that will run a little heavier grade than that (Rec., 792).

I am not quite familiar with that but think it is about 8/10ths. The main line of the I. C. has gravel pits along it, at Crystal Springs and Brookhaven; there is quite a large tonnage; the I. C.'s roadbed is largely ballasted all through Mississippi with gravel from Brookhaven.

In comparing the topography of the Mississippi Valley with the Southeast, in the matter of grades, I will say that after a rain in the Delta it takes at least two days for the water to get off the ground so the dirt itself can be handled. It was necessary when we were constructing those Delta roads to go sometimes at a right angle for a mile, and we would not get over a two-foot drop in the ditch to take that water off (Rec., 793).

The country is absolutely flat, built up from overflows and deposits of silt. Of course the operation of a road like that would be materially less than that of a road in the hill country, but the cost of construction of a road through a level country where you don't run into rock and other hard materials does not run over 50% of that of a road in a mountainous country. There are miles of road

right in the Birmingham district that cost nearly $100,000.00 [fol. 336] a mile, which is pretty high, while the Delta country road would cost you about $20,000.00 to $25,000.00. Those are simple facts (Rec., 794).

These instances are based of course on the grades of the road. Take in that Valley section, we use a basis of not more than 3/10th of 1% against the roads that go east of that, and nearly all of them have a maximum of 1% on their main lines. Yes, I have seen the engine tonnage ratings and they confirm my general statement as to the relative conditions.

Q. If the freight rates within the Mississippi Valley and the freight rates within the Southeastern Territory and the Carolina Territory and the Florida Territory, etc., if they were made with reference to the operating conditions and transportation conditions as deflected by grades and curves and engine tonnages and tunnels and matters of that kind, would there in your opinion, from your experience, be a uniform level of rates throughout this territory?

A. I want to say that the level of rates most certainly ought to be in favor of the level country. In other words, if the rule of three should be applied to give the same rates, level of rates through the mountain and hill country that you do the level country, Henry Ford would not be a circumstance to what the Valley roads would finally show in profits; in fact, with the present rate level, the Illinois Central Railroad is the most prosperous road in the United States, and its rates are builded upon the present basis and have been for many, many years, in fact all those cities along the valley country have been builded and have prospered, and those railroads have built into them based upon thos- conditions, just the same as the mountain country, and both have prospered along in about proportion it seems to me with the balance of the country. I am reasonably familiar with conditions as to the general movement and distribution of sand and gravel from different points in the Mississippi Valley (Rec., 796).

[fol. 337] Examining Exhibit No. 20, Witness Ribe, there is no substantial movement from Memphis to the towns named therein excepting an occasional structure; I should say the town of Perry, Tenn., would build one or two buildings in a year, most all of them of wood; Pinson, Tenn.,

Henderson, Finger, McMarry, Vessel Springs, Selmer, are towns of not over 200 people, or under, and you can imagine what the construction would be. The movement from those towns to Memphis would be all for concrete construction. There is no movement of any consequence from Memphis to the points in Mississippi named in that exhibit, because there are along the M. & O. and are much closer to the shipping points of washed gravel and sand from Columbus and Golden, Miss., and from the Tombigbee plant on the Frisco lines. Those lines would get their road gravel either from our Iuka plants or from Columbus, according to distance because that is clay gravel, whereas Memphis has washed gravel. The available supply of road gravel is the Mississippi supply for those towns (Rec., 797).

Looking at Exhibit No. 21, with reference to rates from Memphis, published by the Southern to points on their lines in Tennessee and Mississippi, they are about the same character of town, and there is very little movement from Memphis to those places. As you go along the Southern Railway you get into the crushed stone district, that is just into the edge of Alabama near Muscle Shoals, into the Golden Granite Company's plant and the Spruce Pine plant. Fully two-thirds of that list you gave me would run into those plants that would be more available. They would run into the Tombigbee plants in Mississippi at Amary. In my opinion, there is no substantial movement from Memphis, and those Tennessee and Mississippi points named in that exhibit (Rec., 798).

Practically all our rates are built upon specific rates. Of course, blind sidings and points like that where two roads [fol. 338] are built, we ship prepaid to the nearest siding to the work.

By Exam. Waters:

Q. Do you believe in a mileage scale of rates?

A. No, sir, it is not applicable to that section of country over there, I don't think it would be practical.

Q. Why?

A. Well, we go into, we take these towns like Memphis, and they come in there on those specific rates, I am just making one illustration, as I base it on the competitive basis, and Memphis has about nine main line roads coming

in there, and this material comes in there from varying distances, and those rates have all been based upon a competitive basis, and those base points have been used for years to carry that material down into the Delta country where they have no macadam materials that they need for building their roads, I would say this comes down in that section of country in trainloads, and the same thing occurs all down the line. Our business moves generally speaking north and south in that section, there is very little tonnage of sand and gravel I would say that moves east of the Mississippi line over into the hill and mountain sections of Alabama and East Tennessee, but we do produce sufficient materials in that valley (Rec., 799).

By Mr. Burchmore:

Q. Bearing in mind the limitations of these cases in respect to the roads in Mississippi that are not named as defendants, and absence of averments attacking the interstate rates into Mississippi, nevertheless I ask you what would be the effect of imposing the full measure of the carriers' proposed mileage scale applied to the actual distances from each particular point of origin to each destination in this territory, in lieu of the present rates that are in effect interstate and intrastate?

A. It would materially increase those rates, and to illustrate, the state of Mississippi as I understand is today [fol. 339] something like ten millions of dollars in debt, and those people down there are not any too prosperous, the delta country excepted, and those people are trying to build their good roads, they don't build the cement costly roads, and if you put these high rates up——

Mr. Walker: I think this is immaterial, I have no objection to it, if the Commission wants to hear it, but I expect we could get people all over the country to testify to being hard up (Rec., 800).

Mr. Burchmore: It is all immaterial to the issues, because there is no issue as to the rates into Mississippi from points in Tennessee, and there is no issue as to the interstate rates from the Mississippi plants to Mississippi destinations and no issue as to the rates of the Columbus & Greenville R. R. or of the Southern Railway and the other roads that are named as Defendants, and yet you have re-

ceived numerous exhibits and considerable oral testimony over my objection addressed to that situation.

Commissioner Lewis: The interstate rates into Mississippi are attacked, are they not?

Mr. Burchmore: They are not, except from Chattanooga and Montgomery, and they are attacked as excessive in violation of Section 1 and as discriminatory in violation of Section 3, and as preferential. I should like the witness to continue this answer, since he is facing the situation (Rec., 801).

(Adjournment until 9 a. m. Feb. 20, 1926.)

Mr. Moffett: You will recall last night we failed to put in the Southern Railway Tariff on Exhibit No. 224, Witness Mofftee. That tariff number is Southern Railway I. C. C. A-9979. That will save additional work later on.

[fol. 340] W. L. Smith was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination continued.

By Mr. Burchmore:

There is neither need nor demand for these rates in the Mississippi Valley and if they are put into effect they will cost an approximately average increase of 40% in the rates in that section. This will be a great penalty and will seriously affect the industries in the Mississippi Valley which have been builded. The money in those industries amounts to a great deal and in most cases the entire capital of those who are interested in those industries will become obsolete by virtue of the fact that they would be either badly located or the business would be so restricted that they would be no longer profitable (Rec., 802).

The industries in that valley are now supplying the demands without the need of other materials coming in. In fact, those industries are not operating on more than 40% or 50% capacity. If these rates become effective, it would reduce the building of good roads in the valley by just that much as they have only a limited and fixed amount

available for good roads, which revenue is created largely from the automobile tax on gasoline, and this is added to by federal roads by whatever proportion the state receives from the federal government. But the state's revenues are gradually being absorbed more each year in the maintenance of those roads if it is their contract to maintain good roads when finished. There is a large use for gravel in maintenance that is growing each year. I would say that my Camden pit today is running on 50% of its output for maintenance work. In my judgment, over 80% of the gravel moved is now used in the construction of good roads and streets in the smaller municipalities and the outlying streets in the larger ones. I gave that percentage [fol. 341] representing the Mississippi territory as a whole (Rec., 803).

Unfortunately, the State of Tennessee is known today as the mud state. There are about a dozen main line highways projected and proposed to pass through Western Tennessee due to the fact the only highway bridge south of St. Louis is at Memphis, and so such highways as the Robert E. Lee Highway, the Bankhead Highway, the Southern National Highway, the Ozark Trail Highway, the Jefferson Davis Highway, the Mississippi Scenic Highway, and the Memphis to Bristol Highway are all centered there in order to cross the river en route east and west. Our Chamber of Commerce handles about 30,000 visitors annually passing through Memphis en route by motor by giving information. This I know by having been chairman of my Chamber's Good Roads Committee (Rec., 804).

Yes, sir, the states of Mississippi and Tennessee do levy a gasoline tax, Mississippi has been 2¢ and there is a proposal pending to increase it to 5¢. I said the Mississippi state debt was $11,000,000.00 but have since been told it is $17,000,000.00. Tennessee levies a 3¢ gasoline tax in addition to its license or automobile tag tax. The taxes stated are in cents per gallon of gasoline (Rec., 805).

Twenty-five years ago Colonel Ed. Russell, former Vice-President of the M. & O., was the daddy of the low rate system on gravel in the Mississippi Valley, and he stated on the platform many times that he thought the only way to get good roads in our section of the country was for the railroads to put in very low rates, and that so far as the M. & O. was concerned, he proposed to and did haul gravel

free from the pits located on the M. & O. at Tamms, Ill., 40 miles north of Cairo, across the Ohio River and down into Mississippi at very low rates, I said free, to his depots for the purpose of paving immediately adjacent to the railroad stations, and at the same time demonstrating the value [fol. 342] of paving that section of the country. He stated that the railroads ought to be glad and he would be glad to haul the good roads material at cost. For 25 years that policy has obtained with the M. & O. and the rates from Tamms were not changed until January 26, 1926, which looks like just at the preparation of this case.

I am the principal owner of the business of which I am President and so have a very large personal interest in these proceedings (Rec., 806).

No, I don't pose as a rate man, I simply know the general situation and think I have a fairly accurate knowledge of our approximate rates from our various pits and competing pits to various destinations. I know the rate from our different pits to Memphis and within a cent or two I think I know the rate from our pits to a given section of Mississippi, but I could not give the tariff authority (Rec., 807).

In my commenting on Mr. Chadwick's testimony that the M. & O. voluntarily established interstate rates on these road building materials entirely apart from the history of the intrastate Commission rates, as I understand it, they were established a long time before the intrastate rates, I will say before 1912.

Cross-examination.

By Mr. Chadwick:

When I said the M. & O. had voluntarily established lower interstate rates than the Mississippi intrastate rates, I will illustrate by your rate from Tamms to Meridian, Miss. I may miss it a few miles, but it is my recollection that it is about 380 miles, isn't that correct?

Q. No, it is about 390 miles.

A. I got pretty close to it. Your rate was established a long time ago at $1.08. Your rates to Columbus and West [fol. 343] Point, it is probably 90 miles less, were 97¢ for a long time, even though the gravel pits were developed at Columbus on your line, I would say approximately 10 years

ago and you still have maintained your Illinois rates. I want to say I think it is very laudable for a railroad to protect its own industries and these industries were on your line at Tamms, Ill. (Rec., 808), and through your own efforts have established these industries and caused them to exist a long time. In my judgment, had you taken out those rates, you would have seriously affected the business of those industries. The fact of the matter is, it is now impossible for them to go into that section but the development of so many pits in the Mississippi Territory, notably at Columbus on your line, has automatically shut those pits out because of the relatively lower rates due to the short distance hauled.

Our rate was 97¢ to West Point. Those were the rates I referred to as having been voluntarily established by the M. & O. on a lower basis than the Mississippi intrastate rates. No, my proposition was the operation of all clay gravel plants for commercial and ballast purposes and sell practically all of it to the highways and municipalities, and it moves in practically train lots (Rec., 809).

I should have modified that; for instance, materials going to the Delta country are generally brought in from at least two sources and I should say there is half a trainload probably from two of our places that would come in there a day. They go south in a trainload. This washed gravel is occasionally used on these clay gravel roads where they find they have a big advantage in rates. Then they get the clay nearby and distribute a certain percentage of clay on this washed gravel, and take something like a harrow and attempt to artificially mix it. This is done occasionally, not generally, it is the exception rather than the rule. It is used almost exclusively on concrete work (Rec., 810), concrete [fol. 344] pavements, bridges. I don't mean to say there are no cement roads but I do mean that the concrete roads in our section cost on an average of $40,000.00 a mile and the gravel roads on an average of $12,000.00 a mile. They literally can't build concrete roads because it would bankrupt them, that is all (Rec., 811).

(Witness excused.)

W. H. RUCKER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I live at Itta Bena, Miss., on the C. & G. R. R., 100 miles on an air line south of Memphis in what is known as the Yazoo, Mississippi, Delta, and at this time am secretary of the Tri-State Association. I am not at this time engaged in producing sand or gravel but did so for several years last past. My present interests and activities are with farm lands, raising cotton, with some land rented out, and I have interests around my own town and through towns in the Delta. I am in the Chamber of Commerce of my city and think I am very familiar with the production and distribution and uses of sand and gravel in the Mississippi Valley and the Delta country (Rec., 812).

For several years I had a pit which I leased from a branch of the M. & O., now the Columbus & Greenville, at Donnelly, Miss., which is just out of the Delta. Later I opened what is now the New Hope pit at what the M. & O. calls Rucker's Switch, 5 miles east of Columbus on the Montgomery Division of the M. & O. I sold out part of my interests in 1922 and finally in 1924. The largest year in the history of the New Hope plant was 1924 with a production of about 300,000 tons, or about 6,000 or 7,000 cars, as they usually run, more likely 7,000 cars. I heard Mr. Smith's testimony concerning conditions in the Mississippi Valley and generally [fol. 345] speaking think he testified according to my own knowledge and understanding of conditions (Rec., 813).

I might add something I think I didn't state; the Delta in which I live is an alluvial country, somewhat like the prairie regions of Illinois. We have there about 7,500 square miles of territory, approximately as large as the entire state of Massachusetts, that does not have a pound of road material, as far as I know; it all has to be shipped from long distances where there are large deposits. It is a very flat country and needs highways more than any other part of the state as all prairie or alluvial countries do.

Mississippi is almost exclusively an agricultural state. The last census gave us about 1,700,000 people, and for

some reason we have never developed any manufacturing industries; have no mills, coal, minerals or ore of any kind; consequently our people have to be an agricultural population (Rec., 814).

We have no large town, the largest we have are Jackson, our state capital, and Meridian, neither of which I think exceeds 25,000 people, they would be mere villages to any other state, like Illinois and Massachusetts. There has been organized in our State a State Chamber of Commerce several years ago, and little local Chambers of Commerce, one in our own town of about 2,000 people, we have been trying to bring about movements that would better these conditions and diversify our crops in the way that the Federal Agricultural Department and other influences have been endeavoring to induce us to do, we have had occasion to go into those things a good deal. I was surprised to find that the little state of Massachusetts, about as large as our Delta, only one-fifth as large as the state of Mississippi, has practically thirty times our wealth; the state of Illinois has 25 or 30 times our wealth; the state of Indiana has perhaps [fol. 346] 15 times our wealth; I have an idea that the county in which Detroit, Mich., is located, on account of its great manufacturing industries, making of automobiles and so on, could probably buy the state of Mississippi. I am pretty sure Chicago could buy it several times over. These matters I have been discussing give us a large area and a sparse population; much of it rather a thin agricultural soil, that is forced to carry the burden of a great many miles of highway construction and maintenance (Rec., 815).

If the section is to be developed it needs good roads. Some of you may know that the Delta in which I live, with some similar sections in Arkansas, probably furnish the bulk of the fine staple cotton of the United States and that is very much in demand for imitation silks and for fine goods generally. The section needs good roads but it is not financially situation to carry a heavy burden for road construction. Just before the close of the war I recollect the federal government discovered the great need of highways and promoted a highway convention at the Chiska Hotel in Memphis. I was a delegate, and that was the beginning of the general highway movement in Mississippi. At that time we laid out highways such as the one parallel to the greatest railroad in our state, the main line of the I.

C. There are many stretches that have not been completed and probably won't be for several years. (Rec., 816).

Congressman Humphries got about $50,000.00 from the federal government just before that which our county supplemented and started an east and west highway from our town to Greenwood and beyond. We hoped to be able to go to West Point and Columbus and on to places like Birmingham and so have people come through the state and see it and advertise our opportunities. The greater part of that east and west highway is uncompleted because the people are unable to raise the funds to hard surface the roads. [fol. 347] Up to a year or two ago we had large areas in the most fertile soil in the county in which I live that we could not get people to live and raise cotton on, and two years ago our county succeeded in running a cheap gravel highway into that section, with the result that last year that section was full of people (Rec., 817) and produced some of the finest crops of cotton for the entire Delta area (Rec., 818).

The cost of building a gravel road now, due chiefly to the raise in freight rates, is something like three times what it was when we began to build several years ago. Depending on the width and thickness of the gravel, I should say from 70 to 100 cars of gravel was used in a mile of highway. I am speaking of clay gravel. There is very little construction of concrete highways in Mississippi (Rec., 819).

Washed gravel is used to a very small extent. There is little building with concrete; of course we build some concrete streets, a small concrete building occasionally, a few churches, and then it is used in such hard surfaced roads as are built now, like in Haynes and Washington Counties, they have a few miles of concrete highway 9 feet wide with gravel shoulders. With those exceptions there is very little concrete work being done in our state.

I think the establishment, both state and interstate, of the carriers' proposed uniform mileage scale would either check almost entirely or very largely our highway construction, except in the most prosperous sections, or it would add a very heavy additional burden to the people who now have all they can bear, many of our lands in the Delta paying from $2.00 to $5.00 an acre tax. I believe it would substantially curtail the program (Rec., 820).

Depending on the kind and location of road, that scale would run all the way from $1200 or $1500, in some cases $2500, additional cost per mile of highway. There is prac- [fol. 348] tically no substantial movement of gravel from states east of Mississippi to Mississippi for road building, except from Spruce Pine in the northwestern corner of the State, which has a specific rate into Memphis that enables it to ship some washed gravel and sand when the local plants are not able to supply it. I think the adoption of rates on the mileage scale as proposed would completely stop all movements from Alabama into Mississippi.

Cross-examination.

By Mr. Chadwick:

When I said the cost of roadbuilding had been generally increased in recent years because of the increase in freight rates, I had in mind the period since I was engaged in the business back in 1916 (Rec., 821).

My recollection is I shipped in 1920, when I opened the New Hope pit at Columbus, gravel to Greenwood and Itta Bena for 50¢ a ton, while now it is 94¢ a ton to Itta Bena from the pit, a distance of 122 miles. It was in 1921 the other pits became dissatisfied with my rates and we had a revision at Jackson which put them upon our present level, that was when the general reduction was made in the I. C. rates but resulted in an increase in M. & O. Rates (Rec., 822).

I don't think there is any movement of sand or gravel other than the one I mentioned from Spruce Pine into Mississippi. I don't think there has ever been any from Montgomery into Mississippi. I don't see how the movement could continue with an increase of about 45¢ a ton, as I recollect the proposed rate. That opinion is not altogether upon the assumption that the rates in Mississippi will remain as they are. Remember that practically all of the material that goes into Memphis is either produced in Memphis or is interstate, coming from Iuka, Spruce Pine and Greenville (Rec., 823). There is a great deal of [fol. 349] washed gravel and sand shipped into Memphis and a great deal of it is taken out of the river. The opinion I gave you is founded on the fact that Spruce Pine now has a specific rate of $1.13 into Memphis and on a combination

rate it would enable them to get into the Mississippi Delta, where there would be the greatest demand for their material, and this rate would make such an excessive increase that the Mississippi River and wayside pits somewhere near there will have to supply the material. The New Hope plant has a capacity of 75 to 100 cars a day and is a washed gravel proposition (Rec., 824).

I am familiar with the movement of washed gravel which is used in concrete work. In the construction of a concrete road that material would move in 8 or 10 carload lots a day. Around Columbus it is common for those plants to send out 18 to 20 cars each. In constructing a concrete road I think the contractor would use less washed gravel than clay gravel because they would not put it over 5 inches thick, where the ordinary clay gravel is laid as thick as 10 and sometimes 12 inches in the alluvial soils. The contractor would receive more cars of the clay gravel than of the washed gravel (Rec., 825).

(Witness excused.)

Mr. Burchmore: That will complete the evidence of the Tri-State Road Material Association, if I may make this explanation, that there were statistics and other matters that we had in mind producing here, that are covered by Mr. Brooker's exhibits, but he is appearing for other interests, and he shows the information in a very complete way. Now, on this description of the railways in Mississippi, I want to explain that in rebuttal on Exhibits 17, 26 and several others of the Complainants' exhibits, I intended to point out through this witness that the movement from [fol. 350] Mississippi origin points to the destinations there shown would be over other railroads and for short distances, thus rebutting any Section 3 showing. Now, if I may have a reasonable latitude of pointing out in the argument what the railroads would haul from points that are already named in this record, I would not have to prove that, it is simply a fact that you might say you would take judicial notice of. For instance, what I have in mind is that from Hattiesburg to points south, the movement is over the Gulf & Ship Island Railroad for distances of about so many miles, which you can see by looking at the map, whereas from Montgomery it is via the Louisville & Nashville Railroad down there.

Commissioner Lewis: I don't think you will have any trouble on that.

Mr. Burchmore: Then we rest.

B. C. Milner was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Price:

I am Assistant State Highway Engineer and act as producing agent for the Highway Department of Georgia. Georgia has 450 miles of gravel roads and about 400 miles so far of hard surfaced roads (Rec., 827).

Materials generally used in constructing the hard surfaced roads are crushed stone, slag, and washed gravel, which materials come in direct competition with each other. In our clay gravel roads just the clay gravel or chert, as we call it, is used. In a sense, crushed stone and washed gravel and slag competes with this clay gravel, as where we put down a penetration road or a road with an asphalt foundation, we can use crushed stone or slag for the base. Clay gravel does not come in competition with those [fol. 351] materials in constructing hard surfaced roads except as a base. We can only use washed gravel for one purpose, and that is the construction of a temporary road or base for hard surfaced roads. We can use slag and crushed stone as a base under those same roads (Rec., 828).

In 1925 we used 49,600 tons of crushed stone, 43,600 tons of slag, 70,000 tons of washed gravel, 136,000 tons of clay gravel, and 142,00- tons of sand. The sand is used for both roads and bridges. It takes machinery to put down a hard surfaced road of those materials, washed gravel, slag or crushed stone (Rrec., 829).

The clay gravel roads, however, are just dumped and spread, so we can handle three times as much clay gravel on a contract as we would the other materials during the day. We have handled as much as 15 or 20 cars of clay gravel per day. The largest amount of washed gravel we have used I guess is shown in Coweta County, where we used as much as 8 cars a day. The biggest portion of the

State Highway Department's program is for grading (Rec., 830).

The tonnage of stone we are figuring on is about 65,000 tons and 50,000 or 65,000 tons of slag, and 85,000 tons of washed gravel, and 170,000 tons of clay gravel and 180,000 tons of sand. A part of that sand goes into bridge construction, which is also highway work. Yes, our estimates show we expect to use twice as much clay gravel as washed gravel, and twice as much sand as washed gravel (Rec., 831).

Our price for clay gravel is approximately the same, that is, the average price. We have paid 20¢ for sand and up to 50¢ at the pits, all prices are pit prices, with an average of about 35¢. Clay gravel is 35¢ average and our average on washed sand is 60¢, and on slag 85¢ at the crusher, and crushed stone is $1.25. The range on stone is from 95¢ to $1.35, and the majority of the slag that we use is 85¢ with a 5% discount for prompt payment, while for washed [fol. 352] gravel the price is 60¢, although we got a few tons at 50¢ but the shippers failed and didn't perform their contract (Rec., 832).

Yes, we purchase river sand from Montgomery. There is no washed gravel or slag produced in Georgia so whatever we purchase must be bought out of the state.

Cross-examination.

By Mr. Gwathmey:

The Department's contracts are made on the basis of competitive bidding. My observation is that we have never had any material variation in price on washed gravel (Rec., 833) except the order we had placed at 50¢ where the shipper failed to ship it; we have paid 60¢ for gravel except a few cars. The slag ran through the year 1925 at 85¢ and there was very little competitive bidding in slag. Eliminating the slag there is not a substantial difference in the prices quoted by the different competing bidders. I am somewhat familiar with the sources from which we get these supplies. Yes, there was one instance of the kind where the Department cancelled certain contracts for clay gravel (Rec., 834). The only cancellation I know of is the one at Ellenton, S. C. All of the washed gravel, and I should say 50% or 60% of the sand, the Department has

used since April 1, 1925, has come from out the State. I would not say there had been any particular change in the movement of these different commodities since April 1, 1925, from points within the State as against points outside the State. We used very little of this material in 1925 prior to April 1 (Rec., 835).

Our department begins operations about April 1st and our shipments continue right on until fall. The ranges in value on these commodities that I have given were based on 1925 prices. We have used a good deal of sand from Montgomery. I don't know accurately but can state approximately that the amount of money available in Georgia, both [fol. 353] state and county, for the 1926 road construction, is about $8,000,000.00 in sight (Rec., 836). And that is the state alone. Bond issues recently approved approximately $16,000,000.00 but could not be available during 1926 because conditioned that the federal government and the state would put up three-fourths of the cost of construction, and of course the state and federal governments haven't that much money to match the county funds for 1926. It is available when the state gets the funds, and the Governor has called a special session of the legislature to consider this question.

By Mr. Ribe:

The tonnage figures I gave represent the material purchased by the Department for all construction, both by the Department and the contractors.

By Mr. Brooker (Rec., 837):

And the prices I gave are for materials entering into highway construction and not building construction or other works. No, range prices of 20¢ to 50¢ with an average of 35¢ doesn't apply to clay gravel. There is no range on clay gravel. Our price for that is 35¢ flat. Wherever the Department purchases materials it pays the freight. The Department is governed in placing contracts by the amount of freight rates or differences in freight rates from the different shipping points (Rec., 838).

The Department is governed by the delivered price of the material. Where there is a difference in freight rates we favor the low point of course. The Department builds

highways and also lets contracts to build them, and the counties build some of them under contracts. I don't know why Georgia didn't get in 10¢ sand instead of paying 35¢. We have bought a good deal of sand from Montgomery but we never bought any 10¢ sand. We have used a great deal of it in our construction work; the Department didn't pur-
[fol. 354] chase all of it, some was bought by contractors and it is possible they bought it for 10¢ a ton but we did not (Rec., 839).

By Commissioner Lewis:

Q. From the point of view of a constructor or designer of roads, and superintendent of construction, does the factor of the weight of these different materials enter into your calculations at all?

A. Oh, yes; stone for instance weighs more than sand; our work, our contracts are always let by either the square yard or cubic yard, and if we have got a material that weighs heavy, of course it is bound to enter into the cost of construction as compared to one that is a lighter material that will answer the same purpose. There is a difference of about 300 pounds per cubic yard of iron blast furnace slag from crushed stone, the former weighing 2300 pounds and the latter 2600 pounds (Rec., 840). We never figure much on the weight of sand; it weighs about 3000 pounds per cubic yard, but of course that depends a good deal on the moisture in it. Washed gravel weighs on an average 2900 pounds. We have used but very little Copperhill slag. Yes, the weight had something to do with it. I have got it here as something like 3000 pounds and Copperhill slag at 3300 pounds (Rec., 841).

By Commissioner Lewis:

Q. As you speak of clay gravel, does it mean gravel that carries a certain amount of silica and clay which serves as a natural binder, and which under the traffic of the road cements this material into a good surfaced material?

A. Yes, sir (Rec., 842).

There is a considerable variation in the different clay gravels respecting the percentage of rock; the rock is generally specified as a quarter inch and over and will run

from 25% to 60% in the various clay gravels we have in this state.

(Witness excused.)

[fol. 355] GEORGE B. GRAVES was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Price:

I reside and am engaged in the unwashed sand and clay gravel business at Warrenton, Ga., operating for 2 years and 8 months my plant at Norris, Ga., on the Georgia R. R., which has a normal capacity of 50 cars per day (Rec., 843).

Prior to April 1, 1925, I didn't have a general line of special rates on our materials out of Norris. Before I could bid on a contract I had to first secure from the railroads a rate. My competition came from South Carolina and a small pit at Wrens, Ga. My experience was that I was prohibited from reaching different points of consumption where roads were being constructed because South Carolina pits had a rate far below what I could procure. The Highway Department gave me business under pressure where they paid as high as 30¢ a ton above the rate out of Ellenton, S. C. In 1925, our conditions were relieved due to pressure and we were put on a mileage basis, which gave us an equal footing (Rec., 844).

I am an advocate of the mileage basis in intrastate movements because the railroads handling our commodity have a system of red tape to follow to get a rate; on the other hand, contractors are required to get the railroads to put in sidetracks at intermediate points because of long distances; by having a mileage scale I don't have to refer to the general freight office to learn what my rate is going to be; in many cases by long distance telegraph or telephone for a rate when the contractor is submitting his bid in a day or two; that applies to contractors as well as the State Highway Department and counties and small towns, and [fol. 356] we ship to the counties. South Carolina enjoys a better freight rate to the gateway of the coastal highway than I do by 3¢ a ton from Ellenton mines and about 13¢ from Steele's Creek (Rec., 845).

By the gateway to the coastal highway I mean Savannah. I load our materials by power machines which involves no shifting of cars; because my tracks are arranged on gravity; when cars come in they are put on loading tracks and do not involve switching; when the train gets in they end in and pull them out, and I can load 40 cars without switching. We are operating today a special train from my pit to Camak, the distribution point of the Georgia R. R., because the locals can't handle the traffic.

Cross-examination,

By Mr. Gwathmey:

The rate in 1925 met the relief but did not meet my approval, because it is entirely too high (Rec., 846).

I was quite willing to have the change made where I was discriminated against by 36¢ and the change enabled me to increase my tonnage substantially; in fact a trainload to one project a day. I ship throughout Georgia where I can get in on the freight rate but am barred in many cases because the rate is too high. At this time, generally speaking, I ship pretty generally throughout Georgia. I have attempted to bid on highway contracts in South Carolina and could not touch them because freight rates into South Carolina were too high (Rec., 847).

I am talking about interstate and not intrastate rates. When I said I was in favor of the mileage system intrastate and limited it to intrastate rates, I meant by that that I was eliminated in securing concessions to local points because we have so many flag stations, prepay stations. I would not care to go so far as to have it apply between states (Rec., 848).

[fol. 357] I might look with favor upon mileage scales interstate. I am loading sand and gravel unwashed at 20¢ a ton, clay gravel from 25¢ to 40¢, depending on specifications, based on the rock, and I have a fixed price on my bids, and it is practically the same the year round, although consumption has some bearing (Rec., 849).

Yes, I compete with other producers but I have a standing price all the way through and it is no different where the contract is for 100,000 or 50,000 tons or for 10,000.

(Witness excused.) (Rec., 849.)

G. E. HEYSER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am traffic Manager for R. O. Campbell Coal Company of Atlanta, Ga., which produces sand, gravel, crushed stone and slag, and I have prepared a statement based on an investigation I made concerning prices of those materials during the past year to my company, which is as follows (Res., 850):

The Campbell Coal Company are building supply dealers, located in Atlanta, Fulton County Georgia, who buy and sell sand, gravel and other aggregates, which enter into building operations. They buy sand from the Atlanta Sand & Supply Company at prices ranging from 35 to 65 cents per ton f. o. b. shipping point. This applies to sand resold by the Campbell Coal Company in car lots.

The Campbell Coal Company takes its total supply of sand for its retail yards from the Atlanta Sand & Supply Company, the prices paid the Atlanta Sand & Supply Company being 60 cents per ton net f. o. b. shipping point, which [fol. 358] price has prevailed for sometime.

From my own knowledge I will state that the prices of Montgomery District sand in Atlanta are 10 and 15 cents per ton f. o. b. shipping point.

The Campbell Coal Company buys and sells gravel in car lots originating in the Montgomery District. The price charged by the Campbell Coal Company to customers has ranged from 30¢ per ton to 90¢ per ton f. o. b. shipping point. The price of 90¢ per ton f. o. b. Montgomery District being established very recently (Rec., 851).

(Witness excused.)

A. P. BURKE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I represent the Atlanta Sand & Supply Company whose plants are located at Rollo and Gaillard, Ga., 94 and 95

miles south of Atlanta, Ga., on the Southern Ry. The Allon Sand Company has a plant at Allon, Ga., whose shipments are also billed from Gaillard and my testimony in a general way will apply for that company.

The companies are engaged in the business of producing, selling and shipping sand only. The pit run material is pumped from the bank, washed and screened, and dewatered to remove the clay.

The average loading capacity of the two plants of the Atlanta Sand & Supply Company is twenty-five cars per day of 10 hours. That of the Allon Sand Company is about 10 cars a day.

About the only market we serve is Atlanta, Ga., which during the year 1925 took 81 percent of our total production. In previous years our tonnage to Atlanta has been [fol. 359] nearer to 90% of our production. Our average daily shipments for the year 1925 was about 19 cars per day from the 2 plants. (Rec., 852).

Practically all of our tonnage moves to Atlanta or to points beyond Atlanta and then chiefly to points within the State of Georgia. We have made shipments of sand to Chattanooga, Tenn., but this was a special grade of sand.

Our sand is either handled in a sand train as a general proposition and moves to Atlanta in train loads or is used to fill out the local trains. The tonnage of other freight on this division is very light and without this sand tonnage I do not believe the Southern Ry. could operate this division at a profit.

It has been our experience that sand for Atlanta proper is often unloaded within 24 hours and delivered on the job, whereas on cars of sand for beyond, generally are in the Atlanta terminals for three to ten days before moving out of Atlanta.

We have three sources of competition. With local sand produced in Atlanta, with sand from nearby pits moving by railroad to Atlanta, and with sand produced in the Montgomery District and at other points located on the Western Ry. of Alabama, east of Montgomery.

With regard to the local competition, this has always been a serious factor. Sand is produced from the creeks around Atlanta, and trucked to the jobs, displacing possible tonnage by railroad. The carriers in the past have

recognized this situation and in order to move our sand formerly had a 30¢ per ton rate in effect from Gaillard to Atlanta. This rate was in effect some twenty years prior to the increases under G. O. 28 of June 25, 1918 (Rec., 853).

After the increases of 1918 and 1920, and the 10% reduction of 1922, our rate was 57¢ per ton and remained on that basis until July 31, 1925.

[fol. 360] Effective August 1st, 1925, our rate from Rollo and Gaillard, Ga., to Atlanta, Ga., was increased from 57¢ per ton to 90¢ per ton. This was a further increase of 33¢ per ton or 57-9/10% at that time. Altogether as compared with the rate in effect prior to June 25, 1918, to the present time, our rate has been increased from 30¢ per ton to 90¢ per ton, or a total increase of 200%. The greatest portion of this increase took effect on August 1, 1925, when the Georgia scales went into effect.

In addition to the local competition which we are forced to meet at Atlanta, we are in competition with plants which are located within 15 and 20 miles of Atlanta. Take for example, Rex, Ga., and Helmer, Ga., both located on the Southern Railway. Rex, Ga., which is located on the Southern Ry., 15 miles from Atlanta, has a rate of 40¢ per ton under the Georgia Scale as compared with my rate of 90¢ per ton for 95 miles. The rate of 90¢ per ton from my plants to Atlanta, Ga., is 50¢ per ton higher than the Rex, Ga., rate for a difference of 80 miles greater in the haul (Rec., 854).

Contrasted with this, I call attention to the present rate of $1.20 per ton on sand from Montgomery, Ala., to Atlanta, Ga., which is only 30¢ per ton higher than our rate for a difference of 80 miles in the haul. The plant at Rex, Ga., is furnishing the Construction Department of the City of Atlanta concrete sand which is moving under this 40¢ rate.

The competition with Montgomery sand is of a more serious nature than the local competition and the sand from nearby plants in Georgia. We produce sand only and have to depend upon the sale of sand in order to stay in the business.

Under the reduction of 10% which became effective on July 1, 1922, the Montgomery rate on sand to Atlanta be-
[fol. 361] came 90¢ per ton. This rate was further reduced from 90¢ per ton to 77¢ per ton, that same month, making the rate 20¢ per ton higher than our rate of 57¢ per ton

for a haul from Montgomery of 80 miles greater than the mileage from our plants to Atlanta, Ga. The present adjustments from Montgomery, Ala., and from Rollo and Gaillard, Ga., to Atltanta, are on basis of the Georgia scale, 90¢ from Rollo and Gaillard and $1.20 per ton from Montgomery.

I have examined the proposed scale of the complainants in the Montgomery case and find that the rate from Rollo and Gaillard will be 85¢ per ton to Atlanta, whereas the Montgomery rate will be reduced 15¢ per ton to Atlanta (Rec., 855).

That makes the minimum rate $1.05 and ours 85¢. Our Rollo mileage is 94 and 95, two plants, and Montgomery is 175. It will make the difference in the rate if their scale is adopted 20¢ instead of 30¢ per ton which is in effect now. Montgomery sand is a by-product sand and is sold in Atlanta at by-product prices. A sand producer in Georgia cannot produce and sell his sand in competition with by-product sand and by-product prices unless the railroads maintain a rate relationship which will reflect proper differences in the rates for the distances transported, and while I know nothing of the system of rate making or the differences which should exist for the additional distances hauled, I do not think that 20¢ or even 30¢ per ton is a fair difference (Rec., 856).

The prices of sand produced at the points of my company vary from 25¢ per ton to 85¢ per ton. The average price would be in excess of 50¢ per ton. If Georgia deposits consisted of both sand and gravel, it would cost as much per ton to produce both of these materials as it does at the present time to produce sand only, and if we had gravel [fol. 362] we could then sell that material at prevailing gravel prices and take less for our sand if necessary going below the actual cost of producing the same, but in producing sand alone this cannot be done.

From my general knowledge of the situation, I will say that sand sells for about the same level of prices as the gravel, but this depends, as a rule, on the nature of the deposits. If the ratio of sand produced approximates or is greater than gravel produced, sand will usually sell for a lower price than gravel. But in localities where the ratio of production is chiefly gravel, sand in some cases will demand a higher price f. o. b. plants than gravel.

I do not think that a level of rates which is intended for uniform application should be prescribed upon a basis which does not reflect the general situation. Irrespective of the fact that I produce sand only, I do not feel that I can consistently ask this Commission to prescribe lower rates on sand than on the other roadmaking materials, but do ask that a basis be prescribed which will reflect a reasonable basis for the carriers, a reasonable basis for the shippers and a basis which will reflect proper differences for the various distances hauled (Rec., 857).

If this is done it will allow my Company to remain in business, as well as many other companies in a like situation to serve markets which are the natural outlets for their products. But if large corporations are permitted to place their materials 150, 200 and 250 miles from their plants at by-product prices, there is not one of us that can stay in business.

The complainants' proposal is $1.05 and 85¢ respectively and the railroads' proposal would make our rate $1.08 and [fol. 363] Montgomery $1.40. I started to gather information as to the falling off of traffic from certain points following the establishment of the Georgia scale but found it didn't mean anything because there was such a falling off in tonnage after August 1, 1925, the effective date of the rates, that it was obvious (Rec., 858) all users of these materials having known as early as February 25 when the order was issued to be effective April 1, began ordering large quantities of materials; some of our very small users placing orders for all we could ship. The rates were suspended until August 1.

That meant that they had several months in which to stock up, and a man who has a contract, if he has any room for storage whatever will naturally order materials. We had to prorate our shipments to our customers, in order to be fair to them, each one desiring to save the 30 cents a ton increase in the freight charges on the material which he knew he would have to bear after August 1st. One customer that I remember particularly, who uses about two cars a day, placed an order with the R. O. Campbell Coal Company, which we filed, for a large tonnage, and that tonnage was to be moved at the rate of 10 cars per day. So as I say, we had to divide up our shipments in order to take the best care we could of our customers. That situa-

tion was brought about by that order of the Georgia Commission (Rec., 859).

The order for that rate became effective April 1 to other points in Georgia than some competitive points; to Atlanta the rate was suspended. In April our shipment was 412 cars; May, 404 cars; June, 420 cars; July, 351 cars; August, 249 cars; September, 225 cars; October, 161 cars; November, 136 cars; December, 79 cars; and January, 1926, 109 cars (Rec., 860).

In my opinion the effect of a further increase in the present rate of 90¢ from Rollo and Gaillard to Atlanta would depend much on differentials maintained between our shipping points and other shipping points as to the rate level; naturally an increase would have some effect upon competition of local sand; it might result in building up that production to a certain extent as there are no large deposits but a good many small deposits. If the relationships were maintained it would make very little difference in its effect on our competitors with plants near Atlanta. We haven't sold a ton on a large contract. Sears, Roebuck offered us a contract for 30,000 tons at $1.30 f. o. b. Atlanta which we declined as they told us we would have to meet the competition of Montgomery at that price. The freight rate from Montgomery was $1.20 so the difference between that and the $1.30 delivered price was 10¢ per ton, and our price was 20¢ per ton (Rec., 861).

[fol. 364] The best information I can give is that that sand was all sold from the Alabama producing points. I do not recall when we have ever been without contracts in Atlanta at this season of the year, and we have been doing business 25 years. The present difference between our rate and the Montgomery rate to Atlanta is 30¢. And under the scale proposed by the Montgomery interests the differences would be 20¢. And under that proposed by the railroads it would be 32¢. We never load any sand as low as 20 tons to the car; we load to capacity or above (Rec., 862). I think the exhibits are in and will show the details on that. We usually get around 33 to 35 tons in a 30-ton car. For years our rate to Atlanta was as low as 30¢. I think the switching rate at Atlanta now is about $.25. My understanding from some older shippers is that they used to move sand to Atlanta for $4.00 a car with no demurrage (Rec., 863). When our rate was 30¢ a ton the switching in Atlanta was $2.00 a

car. We now load in box cars. No, the reason we could not take the Sears, Roebuck job was because the price was too low. Our average loading of sand is 19 cars per day. I do not have the average per car but Mr. Brooker will put that in the record for our company (Rec., 684). At this time we move everything in closed top equipment because the road prefers to furnish box cars at that point (Rec., 685).

(Witness excused.)

R. E. Suggs was thereupon called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am sales manager for the Stone Mountain Granite Corporation, at Stone Mountain, Ga., and am authorized to [fol. 365] speak for the Stockbridge Stone Company, of Stockbridge, Ga.; the Morris Stone Company, at Holton, Ga.; the Kinney & Newmeyer Granite Company, the Wilson Chapman Cranite Company and the Johnson Granite Company, all of Lithonia, Ga. I have been connected with the stone industry in this territory for 14 years (Rec., 866).

I will read the statement I have prepared for this record:

The companies I represent have quarries located at Stone Mountain, Ga., 15 miles from Atlanta and at Lithonia, Ga., 24 miles from Atlanta on the Georgia R. R., The Stockbridge Stone Company has a quarry on the Southern Ry. at Stockbridge, Ga., 24 miles from Atlanta.

The Morris Stone Company has a quarry at Holten, Ga., on the Southern Ry., and the shipping point via Central of Georgia Ry. is known as Bolingbroke. The Morris Stone Company do not, according to my knowledge, make any shipments into the Atlanta market.

These companies produce crushed stone and rubble stone, and the Atlanta market consumes about 90% of the production of the Lithonia and Stone Mountain quarries. Crushed stone competes with gravel, slag and clay gravel. Our chief competition is with the Montgomery District and Chattanooga gravel and with slag produced in the Birmingham District.

The present rate from Stone Mountain, Ga., to Atlanta is 50¢ per ton for 15 miles. From Lithonia and Stockbridge, Ga., to Atlanta the rate is 60¢ per ton for a dis-ance of 24 miles. The rate from Montgomery District on gravel is $1.30 per ton for 175 miles, as compared with a rate of 60¢ per ton from Lithonia to Atlanta for 24 miles. The corresponding rate from Chattanooga is $1.20 per ton for about 137 miles. Birmingham has a rate of $1.30 per ton on slag for 167 miles (Rec., 867).

Our rate from Lithonia and Stockbridge, Ga., is 70¢ per [fol. 366] ton lower than the gravel rate from Montgomery and on slag the rate from Birmingham is 60¢ per ton lower than the gravel rate from Chattanooga. The Stone Mountain rate is 50¢ per ton for 15 miles and is 80¢ per ton lower than Montgomery and Birmingham and 70¢ per ton lower than from Chattanooga to Atlanta.

Irrespective of these differences in rate in our favor, we are not able to sell any considerable portion of crushed stone in competition with Montgomery gravel and Birmingham slag in Atlanta, or at any point in Georgia, because of the fact that crushed stone cannot be produced and sold for anywhere near the figures for which gravel and slag are sold in the Atlanta market.

Our prices in the past year have ranged from $1.05 to $1.50 per ton, depending upon the size. As compared with 1914 and 1915 these prices are about 10¢ per ton higher.

We are now and have been confined to the production and sale of crushed stone for road building purposes only for the reason that we are unable to compete with other concrete aggregates such as gravel and slag in small sizes in other building work.

On account of the gravel and slag competition in the past, we have found that it would not be profitable to equip our plants to produce this character of material for other classes of building work and when no road building orders are available we close down our plants (Rec., 868).

In view of this situation Montgomery, Birmingham and Chattanooga have an open market in Atlanta for all classes of building work other than road building and have no competition with nearby quarries in this territory for this class of building work.

On road building work we do compete, and as an illustra- [fol. 367] tion I call attention to the road built from Scott-

dale to Stone Mountain, Ga., covering a stretch of 6 miles which was built with Birmingham District slag. This is a part of the road over which you pass in going from Atlanta to Stone Mountain. This work was located only eight miles from Lithonia and was built almost paralleling the tracks of the Georgia R. R. At the present time we are not shipping on any work in Atlanta except on one job which is being supplied by Stockbridge.

The Stone Mountain Granite Corporation formerly had three crushed stone operations at Stone Mountain, Ga., but these have all been closed down and discontinued for the reason that we could not profitably operate the same in view of our inability to meet slag and gravel competition from Montgomery and Birmingham (Rec., 869).

Now, in regard to clay gravel, this commodity does compete with crushed stone, slag and gravel, and in this county alone there have been trainloads of clay gravel used in the construction of roads. Our important interests are centered in the Atlanta market, and I do not think that the present adjustment of rates based on the Georgia scale should be disturbed from either our quarries or from Montgomery, Birmingham and Chattanooga, unless it would be for the purpose of increasing the present differences which now exist in the rates.

Cross-examination.

By Mr. Gwathmey:

All we want is an equal spread based upon the difference in distance. Our crushed stone competes with clay gravel in road construction, depending on the type of road; if it were not for clay gravel, crushed stone, slag or gravel would be used (Rec., 870).

[fol. 368] Clay gravel can be and is used as a base for an asphalt road in the same manner as you would put down a concrete base and a working surface of asphalt (Rec. 871).

The weight of slag has had something to do with the proposition as compared with our materials.

(Witness excused.)

R. W. UNDERWOOD was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I am secretary and treasurer of the Pine Mountain Granite Company, whose plant is located at Lithonia, Ga., 24 miles by rail and 19 by the highway from Atlanta. We were incorporated in 1907. I heard Mr. Suggs' testimony and regard it as correct (Rec., 872).

I should attribute the lesser amount of shipments to Atlanta from Montgomery in the latter part of 1925 to the diminution of road work in Atlanta and a marked reduction in street work in Atlanta in 1925 compared with 1924. It is common for a good deal of work to be carried over from one year into the spring of the following year, and I should say there was a lessening of business in Atlanta in the last half of 1925. We make what is called granite sand, being the screenings of the production of crushed stone (Rec., 873). It is used for the same purposes as sand generally and some engineers permit it to be used in concrete and wherever used is used in the place of ordinary concrete sand. We endeavor to get 50¢ a ton but it has sold for 25¢. But in 1911 we sold the Industrial Engineering Company crushed stone for $1.10 at the quarry. I agree with Mr. Suggs as to the present values. The present value runs from $1.00 to $1.50 a ton with an average of [fol. 369] about $1.25. It seems to me if the Lithonia interests were deprived of the Atlanta market they would have to shut down their crushed stone business. We can't go east to Augusta, Ga., because of South Carolina competition, and we can't go south to Macon because there is a quarry near there, and there is no business of any consequence north of Atlanta, so that it is essential that the Lithonia output go to the Atlanta market (Rec., 874).

The Georgia R. R. hauls a good deal of clay east and those cars come west empty, so that the practice of the agent at Lithonia is to take out of those trains the cars that he needs and we load and send them to Atlanta.

Cross-examination.

By Mr. Gwathmey:

Our plant is on the Georgia R. R. between Atlanta and Augusta and our present rate to Atlanta is 60¢, and I should say our strongest competition in the Atlanta market is Montgomery, Birmingham and Chattanooga, with slag and gravel shipped from those points (Rec. 875).

The present difference Lithonia against Montgomery in shipping to Atlanta, I am told is 70¢. Not now is our crushed stone a by-product of our cut stone business, today we actually quarry stone for our crusher and it is no longer considered a by-product. I don't think the quarries could exist without the crushed stone business.

(Witness excused.)

C. D. Bailey was thereupon recalled as a witness and, having been previously sworn, testified as follows:

I was sworn yesterday, at which time I promised the Examiner that I would file with the Commission an exhibit showing a list of the so-called short and weak lines which I represented, and who desire special treatment in this case, and I now file here my Exhibit No. 226.

[fol. 370] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 226, Witness Bailey.")

(Witness excused) (Rec., 876).

Edwin Brooker was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I reside at Washington, D. C., and it is on the record who I appear for. My railroad traffic experience covers a period of 24 years, 15 of that in clerical and executive capacities with the railroads, and the remainder with com-

mercial interests. Formerly I was traffic manager for the Pennsylvania Sand & Gravel Producers, and in that capacity had intimate daily contact with the sand and gravel traffic of Western Pennsylvania, Ohio, Western New York and West Virginia (Rec., 877).

Besides that I made special studies and investigations in traffic and transportation conditions in that section of the country respecting cases before the I. C. C. and the State Commission of Pennsylvania. I have had special intimate contact with traffic and transportation conditions on sand and gravel in Indiana and Illinois and in recent months made special studies and general investigations as to the conditions in the Western Territory, and testified and offered voluminous exhibits based on my investigation in the Western Rate Case recently before Commissioner Aitchison. I spent about 2 years as traffic manager of the National Sand & Gravel Association, who have members all over the United States (Rec., 878), and gathered from [fol. 371] day to day in the regular course of my duties statistics and information from those producers, and the exhibits I have prepared deal with conditions in various territories. I will present my exhibits and make a brief statement as to the contents of each.

Page 1 I think is self-explanatory, it is information taken from reports on file with the Interstate Commerce Commission. The lower section is the report issued by the Bureau of Statistics of the Interstate Commerce Commission, and there is just one item to which I wish to call attention in connection with that table, and that is for the Southern region, with an average mileage operated of 38,176 miles, the revenue tons carried one mile, expressed in thousands, is 52,720,468, and the freight revenue $581,500,000.00. I wish to compare that with the Southwestern district of 32,529 miles, and only 30,948,297 revenue tons carried one mile, with a revenue of $400,178,692.00. I wish to call attention to the average mileage for the two regions, which are approximately the same, but in the Southwestern District the average revenue per ton per road is $2.53, as compared with $2.18 for the Southern District.

Page 2 is figures taken from the reports of the United States Geological Survey covering the production of sand and gravel in the Southern states, and also of crushed stone in the Southern states for the years 1916 to 1923 inclusive.

I wish to call attention to the increase in the production in the state of Alabama, particularly between the years 1922 and 1923; the 1924 production of sand in the State of Alabama was 2,443,753 tons. Now, you will note in that table that there are five states producing more tons of sand and gravel than Alabama, and only three states, Florida, Georgia and South Carolina, that did not produce as much [fol. 372] sand and gravel as Alabama. In Georgia the entire production of sand and gravel, and that is chiefly sand I may state, is only 595,117 tons, which added to the crushed stone production in Georgia of 239,030 tons, would give the combined production of those materials in the state of Georgia. I want to state that those figures do not include the production of slag in Alabama.

Page 3 of my Exhibit are taken from the reports on file with the Interstate Commerce Commission, and cover various lines in Southern Territory. I call attention to the note at the bottom of the page which gives a list of articles included under the description of clay gravel, sand and stone, and it will be noticed that it covers all kinds of stone, all kinds of clays, fuller's earth, and various other articles, so that an average loading taken from the Commission's report as to those commodities would not really express the average loading of sand, gravel and crushed stone alone in Southern Territory (Rec., 880).

In connection with Pages 4, 5, 6 and 7 of my exhibit, I want to correct the dates shown on there as to the effective date upon which the Georgia scale took effect, I show it as of July 31, 1925, whereas that should read March 31, 1925, in all instances, it first appears in Column 6-A, Column 7 and Columns 8 and 8-A should read April 1 instead of August 1. The same changes are made on the other pages wherever it appears.

This shows the rates in effect between points in Georgia, which were merely maximum rates and in effect prior to General Order No. 28, it shows the subsequent increases and reductions and in Columns 6-A and 6-B, the actual amount of increases from 4-24-18 to the present time, or to March 31, 1925. Contrasted with that I show the present [fol. 373] Georgia scale, and the change effective April 1, 1925, on Page 4, with the amount of actual increases from 6-24-18 to date. Page 6 of my Exhibit is merely a comparison of the old Georgia maximum scale and the present

Georgia scales, and I might state that those are minimum scales, and the carriers' proposed scale, which I have termed the interstate maximum scale (Rec., 881). Yes, the same as the carriers propose in this case, Column 4.

In Columns 1-A to 4-A inclusive are shown the earnings per car based on a 50 ton loading for sand and gravel. I use earnings in the sense of revenues, and in Columns 1-B to 4-B inclusive, I show the revenues per car mile. On just a very few exhibits as they have gone in have I seen car mile revenues.

On Page 8 I show the history of the rates from Montgomery, Ala., versus Georgia points to Atlanta, Ga., commencing with June 24, 1918, to the present time. You will note that prior to General Order No. 28, the rate from Montgomery to Atlanta was $1.20 a ton, and contrasted with the rate of 30¢ from Rollo and Gaillard, Ga., to Atlanta of 30¢ per ton at that time, there was a difference of 90¢ per ton. General Order No. 28 was issued increasing those rates 20¢ per ton, which still maintained the difference. Under Ex Parte 74, when the rates were increased 25%, the differential of course was increased to $1.12 (Rec., 882), because that was the percentage increase, but on 4-21-21, Montgomery was given a 50¢ reduction in rate, reducing the differential to 62¢ per ton. On September 8th of the same year, they were given a further reduction of 25¢ per ton, with no change from Rollo and Gaillard, reducing the differential to 37¢ per ton. The 10% reduction of July 1, 1922, followed, reducing the differential to 33¢, and the Western Railway of Alabama in the same month [fol. 374] of that year then established a rate of 77¢ per ton, as compared with 57¢ from Rollo and Gaillard making the differential 20¢ per ton. That adjustment stayed in effect until the Georgia rates became effective August 1, 1925.

I want to contrast the change made in this rate on July 18, 1922, with the increased movement from Alabama points, which is shown on Page 2 of my Exhibit, immediately following that change. That will also refer to the decrease which I gave for the Alabama production for the year 1924.

Now, under the Georgia scale effective August 1, 1925, the Gaillard rate was increased from 57 to 90 cents per ton, and the Montgomery rate was put back on a $1.20

basis, in lieu of 77¢ per ton, making the present differential which is now in effect of 30¢ per ton. In other words, Montgomery has received no increase at all in their former rate of $1.20 per ton in effect on June 24, 1918, but has exactly the same rate as they had at that time, whereas the Rollo and Gaillard rate has increased 200% (Rec., 883).

Under the carriers' proposed scale, I have shown the relative rates as $1.40 from Montgomery and $1.08 from Rollo and Gaillard, making a 32¢ differential. Under the Complainants' proposed scale, the rate from Montgomery will be $1.05, and from Rollo and Gaillard, Ga., to Atlanta 85¢, making the differential 20¢ per ton. On the right hand side, I have shown a similar comparison with Chehaw, Ala., for the same period. Prior to August 1, the plant at Chehaw was shut down, and practically went out of business, but I understand that a new plant has been established at that point, so that the Chehaw competition is something which will have to be reckoned with in the future [fol. 375] in regard to the Atlanta market. The distance from Chehaw is 136 miles, and I understand the Complainants' scale will make a rate of 95¢ per ton to Atlanta from that point. The present rate is $1.10.

Now, Page 9 shows the various rates from Georgia points, as well as from Alabama and Tennessee points to Atlanta, Ga. I have shown the rates in effect prior to August 1, 1925, and the amount of increases which took effect on August 1, 1925, under the application of the Georgia scale. The actual increase, for example, from Rollo and Gaillard to Atlanta on August 1, 1925, was 57.9%, and from Montgomery on sand 55.8% (Rec., 884).

I understand testimony was put into the record in regard to the falling off of the shipments to Atlanta from interstate destinations since the establishment of the Georgia scale. Page 10 of my Exhibit shows the shipments of sand of the Atlanta Sand & Supply Company from Rollo and Gaillard for the entire year 1925, divided as to the shipments to Atlanta and shipments to points other than Atlanta. You will note that August 1, 1925, and subsequent thereto, there was also a marked decline in the movement of sand from Rollo and Gaillard to Atlanta.

Now, this shows the total tonnage shipped to Atlanta and to other points, and shows that the Atlanta shipments consisted of 80.9% of the total movement from the plants

of the Atlanta Sand & Supply Company at Rollo and Gaillard. I also show that the majority of the cars furnished to the Atlanta Sand & Supply Company are 60,000 pounds capacity cars, they comprised 71.9% of the total cars furnished, and the average loading on all cars furnished was [fol. 376] 34.2 tons per car. At the bottom of the page I show the total increase in revenue to the Southern Railway based on the increases made in the rates on August 1, 1925, and showing shipments which moved (Rec., 885) after that date, the total increase was $10,117.47, and if the same ratio of increase was applied to the entire 1925 tonnage, the total increase would have been for the year $36,068.01 on shipments from the plants of the Atlanta Sand & Supply Company.

Page 11 of my exhibit shows shipments of clay gravel, sand and stone via the Western Railway of Alabama and Atlanta & West Point Railroad for the years 1917 to 1924 inclusive. The revenue freight originating expresses to a very great extent the movement or the number of carloads of sand and gravel originating on the Western Railway of Alabama. You will note that beginning with 1922, the tonnage has increased from 4,506 cars to 10,503 cars, and in 1924 to 15,218 cars. I want to compare that with the revenue freight which the Atlanta & West Point Railroad received from connecting carriers. The Atlanta & West Point R. R. connecting with the Western Ry. of Alabama, constitutes the route from Montgomery to Atlanta. Their shipments received from connecting carriers increased from 3,977 cars to 8,306 cars between the years 1922 and 1923.

Page 12 is merely a comparison of various intrastate scales in various southern states with the present Georgia scales and the carriers' proposed scale which is shown under Column No. 3. No explanation is needed, because I understand these scales have been put into the record (Rec., 886).

On page 14 I show the rates from Montgomery to the Birmingham District via routes other than the direct line, and the rates applicable over such routes for different dis- [fol. 377] tances, and a comparison with the Georgia scale rates, and the carriers' maximum scale rates for those distances. On the right hand side of this page I show the corresponding rates from Georgia points to the Birmingham district. Take, for example, from Montgomery to Bir-

mingham via the Central of Georgia Ry., the Montgomery shippers have the use of that rate via the Central of Georgia Ry. today for a distance of 252 miles, which is considerably greater than any of the distances from Central of Georgia shipping points to Birmingham via their line.

On Page 15, I show the rates over the direct lines from Montgomery, Jackson's Lake and Prattville Junction to the Birmingham District, and a comparison with the Georgia scales and the maximum interstate scale rates. I want it understood that when I talk about the maximum interstate scale rates, that is the scale that is proposed by the carriers in this proceeding (Rec., 887).

Well, on page 14 the routes are shown there from Montgomery to Birmingham via Maplesville and the Mobile & Ohio, Montgomery to Birmingham via the M. & O., Alabama Great Southern via Tuscaloosa; I don't show the routes in all cases, no, sir.

By Mr. Gwathmey:

Q. The rules of the Commission require as I recall it, that where distances are shown in the exhibits, the exhibits themselves should show how those distances have been figured.

A. I recall several exhibits you put in yesterday in regard to rates between Central Freight Association points that did not show that information.

Mr. Gwathmey: Two wrongs don't make a right.

Mr. Mohr: Those exhibits had the routes shown on them.

Mr. Gwathmey: For instance, as showing the importance of what I have in mind, I don't know but what on a great [fol. 378] deal of these exhibits the distances are figured via some such unheard of and unusual route as the route from Montgomery to Birmingham in connection with the Central of Georgia Ry. that we were talking about a minute ago (Rec., 888).

Mr. Brooker: That is the direct route of the Central of Georgia, and the only way they can handle it.

By Mr. Gwathmey:

Q. You don't mean that they have a direct line from Montgomery to Birmingham?

A. It is the direct route of the Central of Georgia, and the only way they can go.

Mr. Gwathmey: It goes all over the country, entirely out of line.

Mr. Brooker: What routes do you want? I will endeavor to give them to you.

Mr. Burchmore: There has been no effort on the part of the complainants or the carriers to give you the benefit of any facts that would allow you to establish a rule or that would assist you in establishing a rule as to what degree of circuity shall be permitted and what degree shall be prohibited, in the application of these scales, which they say shall be maximum, the long lines that meet the short line, I have been waiting for facts in that connection, so that Mr. Gwathmey is purely argumentative when he says that that is unduly circuitous, that route, he has given no facts that would so designate it.

Mr. Gwathmey: I don't understand that we are trying Fourth Section questions here. I merely wanted to show that according to every consideration the Commission has [fol. 379] ever given to these questions, to figure a route or your distance rather between two points, say Montgomery and Birmingham, in connection with the application of rates, and then use the route of the Central of Georgia Ry. via Columbus, Ga., is just beyond all question (Rec., 889).

Mr. Burchmore: How long must a route be before you won't let this maximum scale apply over it?

Mr. Gwathmey: I am not going to argue that question with you.

Commissioner Lewis: It would have been very nice to have had those routes, I wish he could furnish that.

Mr. Brooker: The routes are all stated in connection with those rates I have shown from Montgomery to Birmingham; I have been absolutely fair; for instance, on Page 14, I gave the short haul routes from Montgomery to those points.

By Commissioner Lewis:

Q. You always give the short haul direct routes?

A. Yes, sir, on Page 14 via the Louisville & Nashville R. R. direct.

By Mr. Burchmore:

Q. Those are the shortest routes you can find?

A. Yes, sir, those are the short line routes from Montgomery, Prattville Junction and Jackson's Lake to Birmingham, I have not tried to cover anything up, I am trying to show the exact situation as it exists.

Commissioner Lewis: Mr. Gwathmey, has your objection been met? It seems to me he has got there on that marginal column to the left the route indicated, and also the citation of the tariff on Page 14 under the head of commodity origin points (Rec., 890).

[fol. 380] Mr. Gwathmey: I did not expect to ask the Commission to exclude these exhibits, I want the objection made, and I want the exhibits received subject to that objection, it is really in the nature of a comment on the exhibit, but I think it proper to note the objection.

Commissioner Lewis: My point is, it seems to me he has given here the information you want, and I wondered if you had noticed it, he has given the routes and the tariff authorities.

Mr. Gwathmey: I don't think that is done throughout.

Wherever I have dealt with single line rates, I have shown in every case the single line rates of that railroad and if I showed the rate on here it would simply be showing the name of that road as the route.

On Page 16, I show rates from Montgomery, Ala., on both sand and washed gravel to Atlanta & West Point Railroad stations effective prior to August 1, 1925, and the present rates, which really are in most instances these rates on the basis of the present Georgia scales. I show both single line and joint line haul rates in connection with this comparison, but I understand that these lines were considered as one line for rate making purposes, I don't know whether that is correct or not. I also show comparison with the carriers' proposed maximum interstate scale (Rec., 891).

On Page 17, I show a comparison of rates from Nashville, Tenn., and Camden, Tenn., to various points on the N. C. & St. L. Ry., and a comparison of such rates with the Georgia scales and the carriers' proposed scale. You will note that, particularly on gravel, the Georgia scale if applied between

these points in Tennessee would mean material increases in a good many of the rates.

[fol. 381] Page 18 are the present rates of the Southern Ry. from LaGrange, Tenn., and Gravel Siding, Miss., and a similar comparison. The present Georgia Scale and also the carriers' proposed scale would materially increase these rates, if placed into effect.

On Pages 19 and 20, I dealt with the situation in regard to the rates from C. & W. C. pits to Georgia and Florida points. From the C. & W. C. points, in I. & S. Docket 1854, 83 I. C. C., 432, the Commission approved for application from C. & W. C. stations to Georgia and Florida points a certain basis of rates which to Atlantic Coast Line R. R. stations are predicated upon using the single line scale basis (Rec., 892).

By Commissioner Lewis:

Q. Did you give your citation right on there?

A. I have it here, 83 I. C. C., 432, Docket 1848. Now, it is my understanding, and I hav- checked into the situation pretty thoroughly, I understand that these commodities are the only commodities moving from C. & W. C. points upon which the carriers attempt to apply the single line basis; in other words, on all other traffic the rates are high for two line hauls, I wouldn't say all other traffic, but the majority of the traffic, the rates are higher for hauls over the C. & W. C. and the Atlantic Coast Line than the single line rates, and if the Carriers' proposed scale for joint line hauls were established from the C. & W. C. points to Georgia points, which is the basis that the carriers followed out for two line hauls between points in Georgia, that all of the rates from C. & W. C. points to Georgia points would be materially higher than they are today.

By Commissioner Lewis:

Q. Under the decision?

A. Not under the decision, because the Commission es- [fol. 382] tablished the single line basis in that case from the C. & W. C. points to Atlantic Coast Line stations, and I have shown contrasted with that the present Georgia scale for the same distances. In other words, I feel that

the proper basis from C. & W. C. points to Georgia points would be the Carriers' maximum scale rates for joint line hauls, and by making the comparison then with the present Georgia scale for equal distances, you can see the relationship in the existing rates (Rec., 893).

By Mr. Price:

Q. The Georgia Commission prescribed rates for Class A lines, which is the Trunk Line rates, and rates for the Class B lines, which is the short lines, and then a third scale to apply jointly between Class A and Class B lines, and I have just been wondering which one of those scales is represented here on your exhibit?

A. If I had my brief case I could tell you just what scale it was, but I don't recall (Rec., 894).

Commissioner Lewis: I am now proposing in no spirit of arbitrary action, to dispense with the filing of briefs in this case, and to substitute therefor the argument of this case in Washington on March 12. I will say there will be a tentative report, and that the tentative report of course will be subject to the usual procedure, and in that way protect, it seems to me, the interests you gentlemen may have in behalf of your clients (Rec., 895).

Mr. Mohr: May I state that, in accordance with the understanding reached yesterday, I have had prepared as Exhibit No. 217 the testimony of the Witness Bayless, referred to at that time, and also the blueprints accompanying the same, and they have been distributed (Rec., 896).

[fol. 383] Edwin Brooker was thereupon recalled as a witness and having been previously sworn, testified as follows:

Direct examination (continued):

Page 20 of my Exhibit also deals with the question of rates on clay gravel from Charleston & Western Carolina Railway stations to points in Georgia and Florida, and reflects the old rates as well as the rates the Commission approved in that decision, and the earnings per ton mile

under both of those rates, and the revenues per car and per car mile. The Commission in fixing the level of rates in that case only considered the revenues based on a 66,000 pounds average loading of this material, and at this point I wish to call attention to Page 437 of I. C. C. Report No. 83, that is, I. & S. Docket 1848. In comparison with this, as long as we are considering rates, uniform rates for the territory, and on commodities which load in excess of 33 tons loading, I have shown the earnings per car and per car mile on the average loading which has also been used throughout this exhibit on these commodities. There is a correction necessary on that exhibit as to the I. & S. Number, it should be 1848 instead of 1854 (Rec., 897).

Page 21 compares the Georgia and the carriers' proposed scales with various rates and earnings per ton mile on other commodities between points in the State of Georgia. This exhibit shows that the rates on these other materials are considerably higher than the rates on the sand, gravel and crushed stone, and the same difference in the rates is reflected in the revenues per ton mile. But if you refer to Page 22, it shows the revenues per car and per car mile due to the difference in loading with the average earnings per car mile of this material under very much lower rates [fol. 384] compares very favorably with the earnings per car mile of the other commodities; and it is my contention that the per car mile earnings are a proper basis of comparison in preference to the per ton mile earnings because the per car or the car is the unit of transportation, and not the tons.

On Page 26, the first three columns compare the general scales and the brick scales in the Memphis-Southwestern Territory, the Central States Territory and the Southern District, as fixed by the Commission, with corresponding rates on common brick. You will note the Southern District scale is lower in a great many instances than either the rates in the Central States Territory or the Memphis Southwestern Territory on brick; but when it comes to sand and gravel and crushed stone, the Southern District scale rates as proposed by the carriers in a great many cases are higher than the Central States scale, and more nearly approximate the Memphis-Southwestern scale than do the brick scales (Rec., 898).

On Page 24, the first four columns show the so-called Texas-Shreveport Scale in effect prior to General Order No. 28, as increased and reduced under the general increases and reductions. Under Ex Parte 74, the rates were increased 35%. The present scale is shown in Column 5, and the present Memphis-Southwestern scale is shown in Column 6. This is the same as the Texas-Shreveport scale except for distances beyond 175 miles.

In Column 7 I have shown what the rates would be if the original Texas-Shreveport Scale in effect prior to General Order No. 28 had been increased 20¢ per ton, and then further increased 25%, which was the increase allowed in Southern Territory, instead of the 35%, which was the increase allowed in Western Territory, and the resulting [fol. 385] rates are shown in that column. At 100 miles, for example, we would have a rate of $1.02 per ton, instead of one dollar per ton on gravel and crushed stone under the Georgia scale, and $1.08 under the maximum interstate scale proposed by the carriers.

Page 23 needs no explanation; it is a comparison with various other scales in Western Territory (Rec., 899). Most of them are State Commission scales; if you will look back on Page 33, you will see the authorities for a great many of those.

Now, Witness Doss, in his Exhibit No. 77 showed various rates on sand between points in Central Freight Association Territory, and I merely wish to insert into the record at this time that that statement does not show the movements of sand from the large producing points of common or building sand in Central States Territory, and as illustrations, I wish to put a few producing points in the record.

I could add to this list at least a hundred points, points or origin producing the character of sand which is covered by this proceeding, which are not included in that statement, and I have only found one or two or three origin points in that statement from which points I know that building sand and gravel is shipped (Rec., 900): Akron, O.; Massillon, O.; East Liverpool, O.; Fort Jefferson, O.; Mechanicsburg, O.; Steubenville, O.; Attica, Ind.; LaFayette, Ind.; Terre Haute, Ind.; Curran, Ind.; Lincoln, Ill.; Pekin, Ill.; East St. Louis, Ill.; and Alton, Ill.

Witness Doss in Exhibit No. 79 showed various mileage scales in Central Freight Association Territory. It is the

common practice and also the universal practice in the Central States Territoy to publish specific commodity rates from all producing points to practically all destinations to which any of these plants wish to ship, and these are named as specific commodity rates, and the mileage scale rates do [fol. 386] not apply except in case of a movement for which no specific mileage rate has been established.

Exhibits 90 to 122 contain various rates prescribed by the Commission reflecting the 40% increase and reduced 10%; these are not the present rates. In this connection, I wish to call attention to Docket No. 13231, 74 I. C. C., 616, and wish to read into the record the follows: "Numerous reductions in the rates on sand and gravel in Central Territory were made in 1921. A scale prescribed by the Public Utilities Commission of Michigan reduced rates on those materials in that state approximately 13%; and intrastate rates in Ohio were lowered 28.6% by order of the Public Utilities Commission (Rec., 901), the effect of which was to remove the increase of 40% granted in 1920. On October 21, 1921, we authorized the carriers in Central Territory to file tariffs on five days notice reducing their interstate rates on sand and gravel to amounts equivalent to 115% of the rates in effect prior to August 26, 1920, subject to the Michigan distance rates as minima; that reduction appears to have been quite generally made, but complainants insist that it was wholly inadequate."

I also want to state that that reduction was also made in the rates between points in Trunk Line Territory. Now, the Ohio intrastate rates referred to in that decision were before the Commission in—I don't know the docket number, but the citation is 85 I. C. C., 66.

As to the uniform mileage scale of class rates effective throughout C. F. A. Territory, it is split up into zones, Zone A and Zone B scales, and then a still lower basis between points in Illinois. There is a general basis of class rates through the territory except the Northern part of Michigan, and your Zone B scale applies, which is a percentage higher that Scale A (Rec., 902).

[fol. 387] I would say there are varying levels of sand and gravel weights in various sections of the Official Classification Territory; lower rates in Michigan and Western Indiana and Illinois than in the eastern portion of the Cen-

tral States; in the Trunk Line Territory, in the territory west of the Susquehanna River running through Pennsylvania, you have a still lower basis than in the territory east of the Susquehanna, and as a designated point there I might mention Harrisburg. That general statement is based on my knowledge derived from a study of various tariffs that let me to prepare numerous rate exhibits. It is also true in Western Classification Territory, rates in Wisconsin would be lower than in Minnesota; there are varying rates in different points.

By Commissioner Lewis:

Q. Before you proceed, take for example Column No. 5, Sheet No. 5 of your Exhibit No. 225, this is typical in Wisconsin we will say, do they have separate scales for sand and separate scales for gravel and crushed stone? (Rec., 903.)

A. They do not, they are all on the same basis.

Q. Does that apply to all those other states?

A. Yes, sir, all the western states and states shown on Page 25. Outside of the Southern Territory, the only place where important distinctions are made as between sand and gravel is in the New England states, where the Boston & Maine R. R. publishes different rates on sand than on gravel. I think they are all on my exhibit on Page 26. It applies on all these commodities. There are numerous exceptions to the scale which apply to points like Milwaukee, from Zanesville to Milwaukee, and other producing points.

By Commissioner Lewis:

Q. I just happened to notice on Column No. 5, without looking at the state it indicated, but speaking generally, [fol. 388] well, you have covered it in all the other territories except the South, here there is just one scale to cover all these commodities that are here under review? (Rec., 904.)

A. That is the general practice, yes, sir. There is a peculiar situation in Illinois, because from important quarries, such as Thornton, Ill., and Kankakee, Ill., they extend the entire length of the state, distances of 250 miles or more, at a rate of one dollar a ton, and load this material on empty

coal cars going into that territory, but outside of that particular movement, while the rates, there is no uniformity as to the rates, I would say that the rates generally are on about the same level as crushed stone. A just recent case in which I participated was I. & S. 2306, in which rates from Indiana and between Illinois points were checked out in that proceeding by consent of all parties between numerous points in that territory, and crushed stone rates were put on a parity with the sand and gravel rates at that time insofar as we were able to do so (Rec., 905).

On Page 26, I compare the Georgia scales or the maximum interstate scale with some of the scales in the Central States Territory which have been prescribed in various decisions. I would not say that the Ohio Scale was exactly prescribed, because that is an average weighted scale which was just merely referred to in that decision, but the Michigan intrastate scale is a prescribed scale, and the Indiana intrastate scale is also a prescribed scale by the Indiana Commission. In the New England States, those are voluntary rates maintained by those various carriers shown for both state and interstate application.

That leads me to Pages 27, 28, 29, 30 and 31, which are merely comparisons of the Georgia scales and the carriers' proposed scales, with the rates between Central States [fol. 389] Territory, and in my opinion more nearly reflect the proper level of rates on those materials in that territory than some of the exhibits which were put in by the carriers yesterday.

Page 32 deals with the question of joint line differentials. I have shown the carriers' proposed scale, and the basis they proposed in this proceeding, and have shown the additional revenue per car which is to be added to the single line revenue provided their basis is adopted. I have also shown similar information under the Georgia mileage scale, and have shown the basis under the Southern district mileage scale on brick. You will note under 20¢ per ton arbitrary (Rec., 906) for joint line hauls on brick, the carriers' additional revenue for interchanging this traffic is $6.40 per car. In regard to the two line differentials in Central States Territory, as a general proposition, unless the rates are too low, there is no distinction made as to single and joint lines. It depends to a large extent on the attitude of

the carriers in being willing to allow producers on another line to come into their own territory. In the Pennsylvania Case, while no issue was made as to the two line rates, the Commission did adopt a 20¢ per ton differential for joint line hauls. In the Western states, it is the usual practice not to add a differential for two line hauls, but to take a certain percentage of the single line rate, and add them together to arrive at the basis of joint hauls. There have been various decisions of the Commission in the Western Territory fixing a differential of 20¢ per ton, and it is my opinion on the joint line haul rates, that there should be some arbitrary added to the single line rate for all distances in order to cover the cost of interchange between the two lines. That would apply whether it was 20 miles or whether it was 200 or 1,000 (Rec., 907).

[fol. 390] It is just as much a fixed charge as the terminal charge at the origin points and at the destination.

On page 33, I have given a list of various proceedings, with mileage scales which exist in various states, as well as the tariff authorities for the most of them, showing that the application of the rates prescribed applied on the commodities enumerated; I did not include all the commodities, but where they specified the three main commodities here under consideration, such as sand, gravel and crushed stone, I stopped my description with that.

Mr. Burchmore: On Mr. Brooker's behalf, Exhibit No. 225 is offered.

(The statement was thereupon received in evidence, marked "Defendants' Exhibit No. 225, Witness Brooker") (Rec., 908).

I have a proposed scale to offer, but before I start talking about the mileage scale, I want to call the attention of the Commissioner to the fact that under General Order No. 28 the sand and gravel rates were increased 20¢ per ton instead of 25%. This had the effect of greatly increasing the short haul rates on sand and gravel to a greater percentage than the longer haul rates, and the carriers today in considering mileage scales on these commodities for the longer hauls in my opinion do not take into consideration the fact that the long haul rates did not receive their proper proportion of increase as compared with the short haul rates under that particular order.

Now, in the second place, a mileage scale as a general proposition can be suggested which will reflect almost any situation, if you deviate from some established basis of [fol. 391] progression and grouping. I can draw up a mileage scale which will fit the exact situation to meet the needs of any plant who wants to employ me to do so. There are two factors in regard to the establishment of a mileage scale, and that is the terminal charge and the road haul, and you can't get away from them, and a certain sum should be set aside for terminal services at origin and destination before you start to construct the scale. In the second place, we have a road haul, and it don't make any difference whether it is five miles or whether it is 500 miles, the cost per mile, actual cost of handling that traffic per mile, doesn't vary in this way (Rec., 909). You take on short haul traffic, they say that short haul traffic costs more to handle than the long haul traffic; I will say this, that in connection with very long haul movements as a general proposition, you have exactly the same kind of service up to the first division point, in other words, you have local service, unless it originates at a division point itself, you have local service in a local train up to that division point. If it is put in a through train for through service, it has also been my experience that as a general proposition sand and gravel is not given very much through service, it is to this extent, that they will put it in their through trains to fill out the train if they don't have sufficient tonnage otherwise to fill out the train, but otherwise it usually moves over the division, on the division in merely local service just to fill out their trains. So this idea of saying that because traffic receives a through movement, it is less expensive where it passes over two or three divisions, I think is offset by the fact that everytime that car passes through one of those division points, there is an additional terminal charge, which is not the case where you have a [fol. 392] short haul movement of any distances 50 to 100 miles. Therefore I do believe that the same rate per ton per mile for the road haul service to give the carriers a proper measure of revenue, and to provide due differentials, should apply throughout the entire mileage as far as you want to carry it (Rec., 910); and to that sum there should be something added for the extra cost of the service where interchange is made between two carriers. Now,

in taking 40¢ terminal charge, I have tried to be extremely careful, and I don't think there could be any objection to a terminal charge of 40¢ a ton, and I have used 5 mills per ton per mile because at 100 miles, 200 miles, 300 miles or 400 miles, it seemed to me to represent about what the carriers should receive for the transportation of these materials. Under the total rate, you will find the combined result of using the 40¢ terminal charge plus an earning of 5 mills per ton per mile for the road haul for all distances; and in the next column, the proposed scale, we merely dropped the odd cents, at every 10 miles, making the rates end in 5 and 0.

In comparison with that, I show the complainant's scale, and you will note that at 230 miles the rate on sand is $1.15, and on gravel, slag and crushed stone $1.25, as compared with the carriers' proposed scale, $1.53, my scale would work out $1.55; in other words, I start with exactly the same amount as the carriers, 45¢, at 230 miles I have $1.55, but the intermediate rates are properly graded, without any so-called cuts that have been talked about in these proceedings. In other words, there is exactly the same allowance per ton mile and the same terminal charges allowed throughout all these distances (Rec., 911). The rates by using such a method for the longer hauls would be on a considerably higher basis than at the present time, [fol. 393] but if the rates under General Order No. 28 had been increased 25% for those long hauls, instead of 20¢ per ton, these rates would more nearly approximate the basis which would be in effect if the 25% increase had been granted, and it just goes to show that for the long hauls, such as 450 miles, that even under the carriers' scale, it really is not a proper level of rates so as to provide the proper progression and to allow the carriers what they are entitled to based on the mileage hauled.

Mr. Burchmore: Exhibit No. 227 is offered on Mr. Brooker's behalf.

Commissioner Lewis: It will be received if there is no objection.

(The statement was thereupon received in evidence, marked, "Intervenor's Exhibit No. 227, Witness Brooker.")

Yes, I was general manager of a railroad for a year and a half, a small railroad, in charge of operations (Rec., 912).

Cross-examination.

By Mr. Gwathmey:

That railroad was the Pittsburgh, Lisbon & Western R. R., with about 47 miles of track.

Commissioner Lewis: Mr. Morris do you want to file something?

Mr. Morris: Yes, sir, I have one statement I would like to offer in behalf of everyone; that is a statement that Chairman Patterson asked me to prepare of the shipping points in Georgia, South Carolina, North Carolina and Mississippi. I don't know whether it should be as an exhibit, or in what way you want to receive it.

[fol. 394] Mr. Mohr: State how that exhibit was prepared, where you got your data?

Mr. Morris: The statement was prepared from information furnished me by all of the parties in the case.

Mr. Mohr: Present here?

Mr. Morris: Present here, and we merely assembled it and had it typewritten.

Commissioner Lewis: Let's see if we can't get this in the record as Stipulation A.

Mr. Walker: I think we might state that it is not admitted or to be understood that these are the only producing points in this territory; that constitutes a list as I understand it, complete insofar as Mr. Morris could obtain it at that time.

Commissioner Lewis: With that limitation or saving clause, will it be accepted as stated as a list of the shipping points of these commodities?

Mr. Gotterill: It is accepted by the complainants and supporting intervenors.

Mr. Massengill: Norris, Ga., doesn't appear in this list.

By Mr. Gwathmey:

No, sir, the list of points in C. F. A. Territory which I read as not included in Mr. Doss' Exhibit No. 77, does not cover all sand and gravel shipping points in C. F. A. Territory; I can give you 100 more if you want them. I could have put in an exhibit of 100 pages showing exactly the

same situation as I show by pages 28 and 29 of my Exhibit 225 (Rec., 914).

Mr. Gwathmey: It will perhaps be recalled that at the conclusion of Mr. Doss' testimony it was understood that [fol. 395] he would later file a copy of a statement prepared by the United States R. R. Administration showing rates assessed on actual shipments of sand in carload lots during a certain period. The exhibit which Mr. Doss filed here, let me explain, was taken from that compilation. I have a copy here now, but not enough copies to file, and in view of the very apparent disparity as we see it between the rates shown on the Railfoad Administration's compilation and the exhibits filed by Mr. Brooker, I shall ask leave to add also to the exhibit Mr. Doss will file the present rates as they would be today between the points shown on that exhibit.

Mr. Brooker: I don't think there is any question at all but what the sand produced at Ottawa, Ill., is glass and moulding sand, and there is one of your illustrations. I think those are glass and moulding sand shipments and not building sand.

Commissioner Lewis: Have you a request here before us to be passed on or ruled on? Mr. Waters thought you had.

Mr. Gwathmey: The permission was granted yesterday, and I wanted to show the actual rates rather than the rates that are shown on the tabulation itself which was compiled by the United States Bureau of Statistics.

Mr. Burchmore: I believe that was objected to; I thought you were to bring in this exhibit for our inspection.

Mr. Gwathmey: Here it is (Rec., 915).

Mr. Burchmore: I am going to object to what you are asking for here. Mr. Dallas of the Baltimore & Ohio R. R., representing the Railroad Administration, filed with the Commission in the C. F. A. Sand & Gravel Case a statement about the size of a daily newspaper of representative movements in which he showed the rates and the [fol. 396] origin points and destinations, and which related in part to common sand and in other parts to moulding sand, and I thought it was that exhibit that your man referred to; it is not the exhibit which you now tender, and

in glancing at this statement, I certainly did object to that being put in as a statement of the rates and movements on common building sand, and we could rebut it if we had the opportunity.

Mr. Gwathmey: I think it is well to call attention to the caption of this compilation, which was made by the Railroad Administration, that will explain what it purports to be. It reads: "Statement prepared by the United States Railroad Administration showing rates assessed on actual movements of sand in carload lots to, from, and between points in Central Freight Association Territory during the period July 1st, 1918, to February 29th, 1920." Then follows a list of the origin points, a list of the destination points to which the traffic moved, the distance and the rate for that distance and on that movement, together with the tariff references. I ask leave to show the present rates instead of the rates shown on the statement (Rec., 916).

Mr. Brooker: If the carriers will put this into the record in just the manner described by Mr. Gwathmey, I have no objection to it, because this statement itself shows that it covered the actual movements of sand.

Mr. Gwathmey: Absolutely.

Mr. Brooker: Whereas Mr. Doss' exhibit as it went into the record said it applied on sand other than glass and moulding.

Mr. Gwathmey: It showed the actual rates on the sand.

[fol. 397] Mr. Brooker: Other than glass and moulding, that is the way your exhibit read; if he excludes the application of rates on glass and moulding sand from that exhibit, if it is put in to make the Commission believe that it applies on building sand only——

Commissioner Lewis: This just designates sand.

Mr. Brooker: Not the sand; if Mr. Doss' Exhibit is corrected that way, I will have no objection to the exhibit.

Mr. Doss: I showed the common sand rates instead of moulding and glass sand.

Mr. Brooker: Yes, but there is no building sand produced at those points, and therefore it could not reflect the proper level of the rates.

Mr. Gwathmey: What points have you in mind? (Rec., 917.)

Mr. Burchmore: Well, here is Ottawa, Ill., and Utica, Ill., and lots of towns like that which in repeated cases before the

Commission it has been shown produce silica sand, which moves to glass factories and such industries as that, and moves great distances, thousands of miles, under very high rates per ton, that is from $1.50 to $2.00 and $3.00 and $4.00 a ton; that is an entirely different situation from the common sand.

Commissioner Lewis: You are offering this for the record?

Mr. Gwathmey: Yes, sir.

Commissioner Lewis: And the title says it is simply sand, and that these are the rates actually assessed?

Mr. Gwathmey: Yes, sir.

Commissioner Lewis: Can there be any doubt about that; is there any objection to that coming in the record?

Mr. Burchmore: Not if the record may show that those points are shipping points for other kinds of sand that [fol. 398] move long distances.

Commissioner Lewis: Why should the record show that; he doesn't offer it to show that.

Mr. Brooker: I think I can clear it up. In Central Freight Association Territory, the biggest difference between the glass and moulding sand rates and your common sand rates was made at the time that the carriers reduced their rates to 115% of the rates in effect prior to August 26th, and they did not make a similar reduction on the higher grade sand (Rec., 918), they then made two rates to apply from the glass and moulding sand shipping points, and made the building sand rates from those points to reflect that reduction; there is no actual movement from those points, and the rates are on a higher relative basis than your actual shipping points of your building sand.

Commissioner Lewis: Mr. Gwathmey's further motion or request, or whatever you may term it, is to show also the present rates for those same origin and destination points.

Mr. Gwathmey: On common sand.

Commissioner Lewis: Is there any objection to that?

Mr. Brooker: I have no objection if I may be permitted to put into this record another exhibit showing the actual rates on building sand between points in C. F. A. Territory.

Commissioner Lewis: When can you file it?

Mr. Brooker: Within ten days.

Mr. Walker: I understand now you are going to file an exhibit showing the rates on sand from all points in C. F. A. Territory?

Mr. Brooker: I am going to take and file about thirty pages more of the same character of rates that I filed here on my pages 27, 28 and 29, more numerous producing points in Central Freight Association Territory that actually produce building sand and gravel (Rec., 919).

[fol. 399] Commissioner Lewis: It looks to me that you are overemphasizing this thing, here this is away up in another territory, it seems to me you are needlessly loading up this record. Mr. Gwathmey's request here is to file the present rates on ordinary sand, isn't it, from those points of origin?

Mr. Burchmore: With the tariff references, I have no objection.

Mr. Gwathmey: The identical points as shown on the compilation made by the Railroad Administration.

Commissioner Lewis: In your argument, you can punch it full of holes if there are any holes to be found. It is accepted.

By Mr. Brooker:

I should say that 450 miles would practically be the maximum distances, except when you go to ship to Florida points, and of course there you have the Jacksonville combination taken into consideration (Rec., 920).

Q. Should the scale continue notwithstanding the Jacksonville combination?

A. I wouldn't want to state in regard to that, because I don't think the situation is exactly the same on these materials as it would be on class traffic. I haven't gone into this question, but I don't see any particular objection to through rates, although I would not advocate it.

Commissioner Lewis: Mr. Doss, how far do you think the scale should run down here in miles?

Mr. Doss: We have never tried to work a scale beyond 450 miles on these low grade commodities.

Mr. Brooker: I think that is as far as any shipper is [fol. 400] entitled to go.

Commissioner Lewis: Has anybody any thought that 450 or 460 miles is not sufficient?

Mr. Cotterill: Slag moves within Southern Territory 900 miles or more excluding Florida, no, not excluding Florida, but it will move six to seven hundred miles excluding Florida (Rec., 921).

By Mr. Brooker:

The carriers never have complained of their low earnings on the long haul traffic. As to the mileage scales shown on sheets 21 and 22 of my Exhibit No. 225, I think they are applicable intrastate in Georgia; I am not certain. Those scales had been fixed by the Georgia Public Service Commission; but the brick rates are both state and interstate, except the Georgia Commission on common brick extending the scale beyond 150 miles. I have no information as to the movement at all of potatoes, cottonseed, sewer pipe and drain tile in Georgia under those scales (Rec., 922).

In compiling my revenue per car on common brick I used an average loading of 36 tons. I cannot state that those rates on common brick are subject to a carload minimum of 80,000 pounds. I know that I took those average loadings from the I. C. C. reports of average loadings. I am willing that those figures should be corrected to the basis of 40 or 45 tons; it won't make any difference (Rec., 923).

No, I didn't use on page 19 of my Exhibit a single line scale applicable from C. & W. C. stations in comparison with the joint line maximum scale under the carriers' proposal; I used the present published rates.

[fol. 401] No, the Commission in that case didn't prescribe the single line and joint line scales; they approved specific rates published by the C. & W. C. Ry. In approving the rates, if I am not mistaken, the Commission suggested some changes but what they were I don't know. That was to be applied by the carriers over the C. & W. C. and the Coast Line as a single line scale (Rec., 924).

It looks as if there is an error on page 9 of my exhibit; a jump from 144 to 182 miles, and $1.80 to $2.10; I am willing to have that corrected, and under the column head, "Present Rates, Georgia Scale" I am willing to have it corrected if the rate should be figured via the joint line

route through Fort Valley, Ga., so as to give $1.10 instead of $1.30.

As to the length of my familiarity with Georgia rates, I participated in the original Georgia hearing back in 1920 and 1921 and have been in touch with it more or less since then (Rec., 925).

Yes, I testified in the Pennsylvania case, Docket 15329, and am familiar with the adjustment up in that territory. I produced a similar statement in that case; I put in actual shipments from some of the points up in that territory. I don't remember that I showed what the production was in the Central states, including Illinois, Indiana, Michigan and Ohio. The production up there as compared with the production in Southern Territory is very much greater. In the Pennsylvania case I also presented data showing the operating and traffic density conditions (Rec., 926).

Yes, I presented the Southern interstate scales to the Commission in the Pennsylvania case. The data I presented to the Commission in that case demonstrated that the conditions in that territory warranted lower rates than in the Southern Territory, but the carriers contended that on account of the heavy traffic density it would cost them [fol. 402] more to handle their business in that territory than it did in the South. I presented a scale to the Commission for application in that territory (Rec., 927) and I think it started at 40¢ or 45¢ per ton for the short hauls, $1.00 a ton for 100 miles and $1.40 a ton at the 200 mile distances.

Q. I only have your scale up to 100 miles. I will ask you if you will question this statement, that the scale proposed by you in that territory in every instance is higher than the scale you are proposing in the Southern Territory with the exception of the distance of 25 miles?

A. I don't know how it compares. I will say this, though, that we had a different situation up in that territory, because you take the rates, for instance our Group 1 rate from Pittsburgh to Johnstown, the existing rate there is $1.40 per ton for a haul of 75 miles; it wasn't felt that we could suggest as low a scale as we could have suggested in view of the large reductions that were involved. I would say some of the rates were reduced 40% (Rec., 928).

I think the Commission provided for a different grouping entirely than the scale which I suggest. I think they prescribed a 20-mile grouping and started the rate at 60¢, but at 100 miles that was exactly the same rate, at 200 miles it was exactly the same basis that I proposed. For purposes of comparison, just as I have put in this scale right here, I submitted in the Pennsylvania case the Southern Ry. proposed interstate mileage scale. The Commission had before it in the Pennsylvania case the Indiana Scales and other Central Scales shown on page 26 of my exhibit. I am familiar with the shipping points in the territory covered by my exhibit, page 29 (Rec., 929).

[fol. 403] Without checking it I don't know the distance from Bloomfield to Effingham. I presume it is around 94 miles. I don't have the rate from Bloomfield to Effingham. The I. C. has some very high rates in that territory. No, I would not be surprised if it is $1.08. Yes, I am familiar with and participated in the agreement which led to those compromise rates that have just been put in up there. No, the rates in my exhibits were taken from the published tariffs. I don't know the distance from Pekin to Effingham without checking it and offhand I don't know the rate for 138 miles (Rec., 930). I don't know that it is $1.21.

I think you will find that the rates in that Central States Territory are more or less competitive rates. I have numerous other illustrations of that sort. I have read the memorandum of the conference that fixed the Illinois and Indiana rates (Rec., 931). The carriers insisted on sticking a provision in that agreement that none of those rates are to be used for comparative purposes as reasonable rates, because that was a part of the agreement.

Redirect examination.

By Mr. Burchmore:

In the Pennsylvania Sand & Gravel Case, concerning which I have just been questioned by Mr. Walker, the defendant Pennsylvania R. R. said the operating conditions in the Pittsburgh District or in Western Pennsylvania were very difficult, and made a special point of congestion, grades, curves, and the mountain conditions north of Pittsburgh.

By Mr. Walker:

No, I don't think they are any more difficult under your present mode of operation than the conditions on the Fort Valley Branch of the Southern Railway (Rec., 932).

[fol. 404] By Mr. Burchmore:

Q. On this proposed statement Mr. Gwathmey is going to file, made up from a Railroad Administration exhibit of an unknown number and an unknown docket by an unknown witness, I will say that because no number appears on the exhibit, or name of the witness or number of the docket appears on it, do you know whether gravel, and I don't say sand, but gravel, is shipped in any quantities from Michigan City, Ind.?

A. No, that is mostly lake sand up in that territory. Ottawa and Oregon, Ill., are producers of gravel. Ottawa produces glass or silica sand and I think Oregon produces some sand and gravel, and that is the only production at those points.

By Mr. Cotterill:

If you are talking about the Eastern Territory, I may not be able to give you such definite information, Mr. Cotterill, but if you talk about the Central States Territory I would say the average movement in that territory would be about 65 miles for hauls of the products here involved (Rec., 933).

The Pittsburgh District would be about the same on a general average. I don't know that slag would be included under the old rates, because the rates on slag in that territory were the same on a general average. I don't know that slag would be included under the old rates, because the rates on slag in that territory were formerly on a lower basis than your gravel rates and undoubtedly the average mileage would be somewhat greater.

Q. In any consideration of mileage scales in the Northern Territory, would all of that be considered in arriving at the measure of the rate for hauls over 75 miles; in other words, are they not substantially meaningless?

[fol. 405] A. Well, it all depends on the territory that you are in; if you get over to Indiana, moving to Illinois, you

do have movements over there from 100 to 130 miles, but in the eastern part of the state you don't have those movements. It is an almost unknown thing in the Northern Territory for such products to be moved 400 to 600 miles, because of the numerous plants up there (Rec., 934).

Q. Now, you indicated to us that if given reasonable employment, you could prepare a scale that will adapt itself to the needs of any particular clients that at the moment you might be serving?

A. Yes, sir. In this particular instance I am representing a producer of crushed stone in Columbia, S. C., and some crushed stone producers in Georgia, as well as a producer of sand in the Fort Valley District. The competition which all of my clients encounter is with slag from Birmingham and with the producers of sand and gravel in Montgomery.

Q. In the construction of your mileage scale, your objective has been to achieve as high a rate of progression as can be accomplished, has it not?

A. It does not, I don't care what factors you use, whether you use four mills or whether you use 30 cents a ton terminal or anything else, you reach the same result in working out a mileage scale (Rec., 935).

I don't understand what you mean, Mr. Cotterill.

Q. Well, in adding a given constant terminal factor and a line haul factor, your line haul factor could not conceivably under any circumstances increase in cents per ton at a greater rate than the same ton per mile for a long or a short haul, is that clear?

A. No, it is not.

[fol. 406] Q. All right. You took a line haul factor of what mills per ton miles?.

A. 5 mills per ton per mile.

Q. Yes, and you used that constant line haul factor throughout the length of your scale?

A. Yes, sir.

Q. To illustrate my point, could you begin at 5 mills to start with, and wind up with 8 mills at the limit of your scale?

A. No.

Q. That would be irrational?

A. Yes, sir.

Q. Now, taking that extreme illustration, would it be except in degree equally irrational to have your ton mile line haul factor any greater at the tail end than in the beginning? (Rec., 936.)

(Question read)

A. I don't know what you mean.

Q. All right, you have agreed that you could not make your line haul factor 5 mills at the beginning of it and 8 mills at the end of it, haven't you?

A. Yes, sir.

Q. Will you agree with me that you could not make consistently your line haul factor 6 mills at the end of the scale and 5 mills at the beginning?

A. Yes, sir.

Q. You will agree with me then that you could not with any degree of consistency under any theory of rate making publish a scale within which is contained a rule of progression any higher than you have conceived in your scale here?

A. I will have to ask you to read that.

[fol. 407] (Question read.)

Q. Well, Mr. Brooker, you have just agreed with me that your theory was to add a given constant terminal factor?

A. Yes, sir.

Q. And a line haul factor?

A. Yes, sir.

Q. You have agreed with me that there would be no consistency or propriety in any such scale if your line haul factor should be a higher ton mile charge at the end of the scale than at the beginning, you agree with that, don't you? (Rec., 937).

A. I think it should be the same rate of progression all the way through.

Q. Apart from your thought that there should be the same rate of progression, is there any conceivable plan under which it should be higher at the tail end of the scale than at the beginning?

A. I don't think so.

Q. Then does it follow to your mind that you have conceived a formula which produces the highest possible rate of progression that any degree of logic could possibly approve of?

A. No.

Q. Can you conceiv[illegible] any possible higher rate of progression than that?

A. Yes, if you used 6 mills and a 30¢ terminal.

Q. If you mean by that to reduce your assumed terminal factor, of course, obviously, but if you have determined a proper terminal factor to begin with, could you produce any higher progression in a scale than you have?

[fol. 408] A. Yes, by increasing the allowance per ton mile.

Q. And produce the inconsistency of a higher ton mile allowance at the tail end than at the beginning in the line haul factor?

A. No.

Q. You don't agree with that? Now, at least you will agree with me, Mr. Brooker, that it is to the peculiar interest of (Rec., 938) your clients in this case to obtain a mileage scale, irrespective of its level, that will produce as high a rate of progression as you can obtain approval of, isn't it?

A. No, sir.

Q. Would you have any interest in a low curvature or rate of progression?

A. My interests are absolutely opposed to any scale which has got any bumps in it.

Q. Granting that.

A. Or that does not provide the proper spread as between the different distances.

Q. Granting that, we agree that there should be a proper spread, but you have an interest, have you not, in making that spread as high as you can produce it, haven't you?

A. I wouldn't say that, if you are talking about Jacksonville.

Q. No.

A. The Columbia rate will be increased 40¢ a ton under this proposition, with the differential which is now in effect today, it will remain practically the same.

Q. I didn't have Jacksonville in mind, but taking the territory as a whole, your commodity, rock, has a price 50% [fol. 409] and greater than the competing commodities, under those circumstances your objective, is it not, is to obtain as high a scale as you can in its progression, is it not?

A. No, I was trying to be fair to the carriers and fair to everybody (Rec., 939).

Q. You still think it would not be a higher progression than your scale would produce?

A. If you wanted to apply it to greater earnings per ton mile, you might, yes, but I don't think the 4 mills per ton mile earnings for the road haul would be a fair basis for the carriers.

Q. You are thinking in terms of the revenue producing quality of the scale, and I am thinking in terms of the theory of progression.

A. The Theory of progression has to be governed by the amount of transportation involved, Mr. Cotterill, I don't think there is any difference between the cost of transporting these commodities 500 miles per mile than for handling them 50.

Q. In that respect, Mr. Brooker, you were governed I think you said by the conviction that after certain distances are reached, there is a duplicate terminal service, which again starts the costs over again, something to that effect?

A. I said that you had local train movements in connection with the origin and delivery of most of the movements of sand and gravel, except where it moves between big terminals, and whether the business is handled 50 miles, or whether it is handled 5 miles, every shipment you have has a certain amount of that local movement, except if it is moving between two big centers (Rec., 940).

[fol. 410] I didn't participate in the Southern Class Rate investigation. I know what the Commission in its decision in that case regarding class rates but don't think it applies on these low grade commodities. The handling of class traffic is always given a different class of service than handling of these low grade commodities. The higher the grade of traffic the more expedited service is given to it. On these low grade commodities, except when there is a special movement from Birmingham or Montgomery to Florida, where they almost give it passenger train service, the average movement is in slow moving trains (Rec., 941).

I took the carriers' minimum rate of 45¢ per ton for a 5-mile haul in formulating my judgment of what would be a proper terminal factor for the construction of an interstate scale and assumed that that would cover the terminal charges plus the road haul movement of 5 miles.

Q. What data did you have available upon the basis of which to compute a ton mile constant line haul factor?

A. That basis was taken because for all distances it occurred to me it would allow the carriers fair revenue for all distances hauled. Well, I took into consideration what the carriers were proposing in this proceeding, for example taking a distance of 200 miles, they were proposing $1.44, and my basis allowed them $1.140; at 230 miles it allowed them $1.53, my basis allows them $1.55, and at various distances, in order to strike the same grade of progression all the way through, you had to use the earnings of 5 mills per ton per mile, and when you had those two outside sources, you formulated your scale and carried it to those other distances. Now, Mr. Cotterill, I will say this, that I tried to take into consideration in formulating the scale this unusual situation brought about by the fact that the rates under General Order No. 28 on your long haul shipments were only increased 20¢ a ton, and to illustrate that I wish to say [fol. 411] that your base rate from Montgomery to Jacksonville (Rec., 942), if it had received an increase of 25% under General Order No. 28, instead of 20¢ a ton, would be $2.38 today, instead of $1.89, and the increase granted at that time it doesn't seem to me properly distributed increases in revenue which the carriers received; in other words, there was a greater burden placed on the short haul rates than on the longer haul rates. Sand and gravel was one of the commodities that was excepted from the general increase of 25%.

Q. Well, in substance then, that then except where that method of general advance was employed as to any commodity the Interstate Commerce Commission now could make a national review of rates, couldn't it, by starting over again at something like a percentage system?

A. I think they could, I said the same thing in the Western Rate Case, that I didn't think a flat percentage increase was the proper rate of progression for all distances (Rec., 943).

By Mr. Walker:

Yes, I spoke of a 20¢ increase under General Order No. 28 and presume the Southern basic scale was reduced from 63¢ to 50¢ before the 10% reduction was made, but in con-

sidering the rates, Mr. Walker, that you suggested for the long hauls, and suggesting them on the basis that you did, you undoubtedly considered the fact that numerous rates throughout the territory for these longer hauls were on a lower basis due to this 20¢ a ton increase instead of the 25% increase. No, I cannot indicate any case where the Commission has prescribed as low a rate as 45¢ for the 5-mile haul; personally I think the minimum rate on sand and gravel should be 50¢ for the road haul.

Yes, I think the average haul in Southern Territory is higher than the average haul in the Central States (Rec., [fol. 412] 944). And my statement is based on the fact that you don't have so many short haul movements in the Southern Territory. I have in my files what the average haul is in Southern Territory based on statistics of shipments which have been supplied me from the best sources, but I haven't it with me now and can't tell you just what it is. It may be that the evidence here is that it is 65 miles on the M. & O. R.R., but when you take into consideration your long haul shipments to Florida it is folly to think that the average haul in Southern Territory is less than in the Central States (Rec., 945).

By Mr. Gwathmey:

The interests I am representing here have indicated to me that they are willing to go along on the present system of making rates into Florida. I think my clients work through Jacksonville in constructing the short line mileages into Florida.

By Mr. Burchmore:

I think it was in 1920 or 1921 that I prepared a proposed mileage scale built on the theory of taking the terminal and adding a line haul for use in another case (Rec., 946).

Since then I have studied this question of what would be an appropriate terminal charge at origin and destination and the use of a constant line haul charge in the various territories, and have been involved in switching cases and made complete studies of switching costs, not in this territory but in other territories. I have ridden switch engines for two weeks at a time making deliveries around the switching district and familiarizing myself with the situation, and it is

my conclusion that the carriers are entitled to at least a 40¢ terminal charge as a general proposition on these low grade [fol. 413] commodities. These two factors of the 40¢ terminal and the 5 mills constant line haul have been under consideration since last January when I was down here and only recently I rearranged the exhibit after I got here to show the comparison with the other scales. It is something I have thought of for several years (Rec., 947).

(Witness excused.)

E. L. HART was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I reside in Atlanta and am employed by the Atlanta Freight Bureau as Assistant Traffic Manager and have held the position for the past five years. I am appearing here in behalf of the membership of the Atlanta Freight Bureau interested in these particular commodities and specifically for the State Highway Department of Georgia, the Counties of Fulton and DeKalb and the City of Atlanta, the Pine Mountain Granite Corporation of Lithonia, the Davidson Granite Company of Lithonia, and the Arabia Granite Company operating quarries at Arabia Mountain. I have prepared certain exhibits, Numbered 228 to 243.

Mr. Watkins: We offer them now subject to objection as we go through and as the witness will take them up.

Commissioner Lewis: The exhibits will be received subject to objection (Rec., 948).

I have just a short preliminary statement I wish to make, Mr. Watkins. Due to the change of procedure, I have discarded the written testimony, and will only deal briefly with such exhibits as I may offer for consideration by the Com- [fol. 414] mission. My testimony will deal mainly with the issues involved in the Thirteenth Section Case, Docket 17517. Upon the filing of the complaints here being considered, and the subsequent Thirteenth Section application filed by the Atlantic Coast Line Railroad, it became

apparent to the interests for whom I am testifying that while the case was to some extent limited in its scope, any order by the Commission as an outcome of this case would necessarily represent a level of rates on the commodities involved that would eventually be applied on state traffic in the Southern Territory as a whole, and my exhibits have been prepared with this general idea in mind.

We are very much concerned with the revenue consequences involved here, as the Atlanta Industrial District is the largest single consuming center of the commodities here being considered in the Southeast, with the exception of Birmingham, Ala. While we have never been able to determine the reason that prompted the Georgia Commission to prescribe its maximum scale, which became effective April 1, 1925, the order of the Georgia Public Service Commission was an enormous increase in rates on these commodities to the Atlanta district, such rates having been in effect for many years, and established (Rec., 949) voluntarily by the carriers, and while we appreciate the fact that the scale prescribed by the Georgia Public Service Commission did in some instances slightly reduce the rates in effect prior to April 1, 1925, the revision from intrastate points, as well as from interstate points into Georgia, as the result of the Georgia Commission's order, undoubtedly resulted in substantial increases in the carriers' revenue on this particular traffic. In fixing a maximum scale for application on the commodities involved here, it is our thought that a lower level might properly have been prescribed by the Georgia Commission.

[fol. 415] I might add right here at this point, that we feel that the Georgia Commission might properly have taken into consideration the facts that these commodities are used primarily for road building purposes, and that in most of the Southern states except Georgia and Alabama, they have municipal rates, and while unfortunately where, under the present Georgia code, the Georgia Commission of course is not empowered to prescribe municipal rates, however we think this factor should have been given its proper consideration in prescribing the maximum scale. It has become evident from the testimony and exhibits submitted by the carriers in this proceeding, that it is also their thought that the mileage scale which they have proposed should apply

uniformly within Southern Territory with certain reservations, and as to this part of it, we are in accord with the railroads, however we do not agree with them as to the level of their proposed scale (Rec., 950).

My Exhibit No. 228 is merely a reproduction of an exhibit which was attached to the Southern Freight Association's Submittal covering the interstate adjustment which it was necessary to make as the result of the order of the Georgia Public Service Commission.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 228, Witness Hart.")

There are seven pages of this exhibit, and as you will observe, each common tariff as it is published was taken, and each rate shown, which would have to be changed in order to clear the Georgia scale. Now, the proposed rates shown here under the present rate is the Georgia Scale, on the Georgia Commission's scale. On the first page of this exhibit on the left hand side you will notice a number of rates on washed gravel from Chattanooga to Georgia [fol. 416] points which are local stations on the Central of Georgia Railway. I recall the witnesses for the Complainants stating that they had no rates out of Chattanooga except the Central of Georgia's interstate mileage scale, and I am merely calling attention to those (Rec., 951).

By Commissioner Lewis:

Q. I didn't catch one thing, you say that the column headed Proposed Rates is not the Georgia scale?

A. No, the carriers in revising these individual interstate point to point rates as the result of the Georgia Commission's order, have merely revised those rates to reflect the Georgia Commission's scale literally, that is if the rates were lower; if the rates happened to be higher than the Georgia scale of course they did not publish them. This exhibit was merely submitted to indicate the scope of the interstate revision made necessary in order to comply with the Georgia Commission's order.

Q. I want to get this clear, a little while ago you referred to the caption or designation "Present rates," and I thought you said they should be the present Georgia rate?

A. No, the exhibit itself was merely a reproduction of an exhibit which was attached to the Southern Freight

Association's submittal covering this interstate adjustment which was made necessary to conform to the Georgia Public Service Commission's order (Rec., 952).

By Mr. Watkins:

Q. The proposed rates mean not your proposed rates in the submittal.

A. The proposed rates are the rates which they proposed, but are the rates prescribed by the Georgia Public Service Commission. In other words, it was necessary to make these interstate revisions to conform with the order of the Georgia Public Service Commission.

[fol. 417] The washed gravel rate from Chattanooga, Tenn., to Dalton, Ga., is the rate now in effect under the Georgia scale, as shown under the proposed rate there; that is the current rate in every case under the Georgia Commission's order. Now, the present rate is the rate that was in effect prior to August 1. There were some exceptions into Georgia on this revision; take on the second sheet there, that is numbered 4, on the right hand corner of Sheet 3 you will notice the rates on gravel from Montgomery to LaGrange, the proposed rate shown there is 90 cents, that is on washed gravel, the same as on unwashed gravel, the Georgia scale is shown opposite that; the carriers were unable to revise that rate to reflect the full basis of the Georgia Scale, due to the fact that those rates had been fixed by the Commission in I. C. C. Docket 13365, which was the Roquemore Gravel Company versus the Atlanta & West Point Railroad Company et al., decided December 7th, 1923. The Commission in that case fixed a rate of 90 cents on both sand and gravel from Montgomery, Ala., to LaGrange, Ga. The 90¢ rate is still maintained at LaGrange (Rec., 953).

On Sheet 6 of this exhibit, but it is shown as 16, they have got a little small 16 there, you will observe, the resulting interstate rates from Western Ry. of Alabama pits to Atlanta and points between Atlanta and West Point, Ga.; I am calling attention to this revision in view of Mr. Browder's statement yesterday that rates from pits on the Western Ry. of Alabama to Georgia points were not on the Georgia Commission's scale (Rec., 954). I think that statement of Mr. Browder's was correct as to some of his rates, but insofar as the rates between West Point, Ga.,

and Atlanta are concerned, they are today on the Georgia scale.

My next Exhibit is a chart indicating the progression of the carriers' proposed scale.

[fol. 418] That is Exhibit No. 229. Exhibits 229, 230 and 231 are charts respectively of the carriers and the Georgia Public Service Commission's scale.

(The charts were thereupon received in evidence, marked "Intervenor's Exhibits Nos. 229, 230, and 231, Witness Hart.")

I merely charted these scales for the Commission's information. It is our view that the carriers' scale does not reflect the proper progression, I feel that the progression is not uniform; in other words, it is too abrupt for the short distance; you will observe how the scale progresses up to distances of 170 miles, at which point it breaks and then gradually and apparently extends on a uniform basis from that point on out to a distance of 460 miles (Rec., 955).

Exhibit No. 230 is a similar chart indicating the progression of the scale prescribed by the Georgia Public Service Commission. While this scale generally speaking progresses uniformly, there is one break in the scale at between 120 and 130 miles, which would have the result of course of causing a hump between the 120 mile block and the 150 mile block. With that exception, the Georgia Commission's scale seems to be fairly well progressed.

That hump is at 130, the hump, to be specific, the hump would be at the 140 mile block, although the progression which causes the hump was at 120 to 130 miles; in other words, they progressed the scale there for 20 miles rather than for 30 miles as they did below; in other words, to progress the scale 30 miles from 90 to 110 miles, they should break it in between 140 miles, which causes the hump there at that break.

My Exhibit No. 231 is a scale which I am suggesting for general application over the trunk lines in Southern Terri-
[fol. 419] tory, applicable on these commodities involved.

By Mr. Watkins:

Q. What is your 232?

A. 232 is a chart indicating the progression of this scale.

Q. The progression of your proposed scale?
A. Yes, sir.

(The chart was thereupon received in evidence, marked "Intervenor's Exhibit No. 232, Witness Hart.") (Rec., 956.)

Exhibit No. 233 is a comparison of the three scales, the carriers' proposed scale, the Georgia Commission's scale and the scale which we proposed.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 233, Witness Hart.")

The chart speaks for itself and is merely prepared to indicate the level of the progression of the three scales. Exhibit No. 234 indicates the progression by miles and rate of the three scales which have been previously charted.

You will note by referring to the Georgia Commission's scale, where that hump occurs at 110 miles, you will see the added miles is 30 miles, 10 cents, and 130 miles, you see the added miles is 20 miles, then 160, then 30 miles again; in other words, the break shows in there which caused that hump that I referred to in the chart (Rec., 957).

My Exhibit No. 235 is the comparison of certain scales as indicated; what I had in mind was to use the comparisons to indicate the breaks in the various scales.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 235, Witness Hart.")

[fol. 420] Of course right here I might say that I do not agree with Mr. Brooker in the way he has made his scale, and I have never been able to find but very few scales where these heavy moving commodities that are based on that theory, and I did not develop my scale on that theory, and I simply submitted my scales and some of them that have been prescribed by the Commission to bear that out.

There is one error there in the scale, Sheet 4, I show it as Docket No. 9703, it should be 9702, the Memphis-Southwestern Scale. While this scale has been offered I think by some of the shippers' witnesses, I don't recall that any of the carriers submitted the scale as such for comparative purposes, but possibly the reason for it was that the scale

was lower than their proposed scale for certain distances, particularly the shorter distances, and it is there that we make our attack on the carriers' proposed scale, in the shorter distances (Rec. 958).

Before I leave that exhibit, I recall that there was some discussion yesterday about this administration scale, that is the averages of the scale which the administration got out during Federal control for application over the Trunk Lines in Southern Territory; you will observe in Column 2 of Scale 2 there, it represents the averages of those scales both on crushed stone, gravel, slag and sand; the Administration at that time did offer a different scale on crushed stone, gravel and slag than on sand.

Exhibit 236 is a chronological statement of the rates from representative shipping points into Atlanta.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 236, Witness Hart.")

[fol. 421] I think Mr. Brooker stated the fact that the rate prior to June 25, 1918, was 30 cents from Georgia pits to Atlanta, the original or origin of the rates from the Alabama pits was generally speaking 5 cents over the Georgia pits at the time they were established; in other words, those rates were made 35¢ to Atlanta, or 5¢ over the rates from Gaillard and Rollo, that is on sand (Rec., 959).

My Exhibit No. 237 is similar to 236 except that I have shown there what the rates would be under the carriers' proposed scale and the increases under that scale, as well as the same comparisons made with the scale which I have suggested, and the rates which became effective on August 1st under the Georgia Commission's scale.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 237, Witness Hart.")

Exhibit No. 238 is a comparison of the rates on brick as prescribed by the Commission in I. & S. Docket 1885, with the carriers' proposed scale, the Georgia Commission's scale, and the scale which I have suggested, and the exhibit indicates the per car mile revenue on the basis of Montgomery, as shown in the caption of the exhibit.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 238, Witness Hart.")

I think it is a fact that the loading of face brick would probably be in excess of 50,000 pounds, but I think the comparison used is fair, that is, the ratio*n* is fair (Rec., 960), 50,000 pounds as against 70,000 pounds on these other commodities. But to illustrate this point, there is located at Sibleyville a large brick manufacturing plant, that is they manufacture face brick, and ship to Atlanta, that will come within the 175 mile group; on the basis of the minimum on brick of 50,000 pounds, the earnings would be $50.00 per car; on the basis of the carriers' proposed scale from Birmingham to Atlanta on slag, which would come in the same group, it would be $49.00, using 70,000 pounds, or only [fol. 422] $1.00 less than on a car of face brick. In other words, there is no comparison in the valuation of course of brick and slag. I have just merely cited that instance, I imagine when the actual loading was taken into consideration, you would have a per car revenue on slag much in excess of your brick revenue from Birmingham district to Atlanta.

My exhibits 239 to 242 inclusive are mere rate comparisons and have perhaps been offered either by the carriers, the complainants or the intervenors at some point in the case.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibits Nos. 239, 240, 241 and 242, Witness Hart.") (Rec., 961.)

I do recall, however, that Mr. Crane in his testimony made reference to some departures from their proposed scale, and had in mind LaGrange, Tenn., to say Chattanooga; this too is shown on my Exhibit 239; however, he made no mention of the rates which are published from those points to the Birmingham district, which I have also shown on my exhibit.

My Exhibit No. 243 is, you might term it I guess a revenue statement, it purports to show the tonnage for road building purposes of the materials involved here in Fulton County and the City of Atlanta during the calendar year of 1925.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 243, Witness Hart.")

That exhibit just refers to the governmental agencies of Fulton County and the City of Atlanta and does not

include the commercial uses of these commodities. I have not included DeKalb County, the City of Atlanta being partly in that county (Rec., 962), but taking the two counties and the commercial uses, I would imagine that this statement would represent about one-third of the actual [fol. 423] tonnage. The total increase would be about three times what is shown on Exhibit 243. The exhibit indicates under the Georgia Commission's rates which became effective August 1st, that Fulton County, taking it on a year's basis, it would increase their freight account $48,935.00; under the carriers' proposed rates, using the same tonnage, it would increase it $63,445.00 over the rates that were in effect prior to August 1st. Now, to the city the increase under the Georgia Commission's scale and these increases we have already gotten amounts to $65,480.00, and under the carriers' proposed scale, $99,790.00, or a total of $114,415.00 under the rates that we have already got in effect, and $163,235.00 under the carriers' proposed scale. I think it a correct estimate to say it reduces one-third of the traffic.

In that exhibit the effective date of the rate should be August 1 instead of 7-1-25. There may be other typographical errors but I don't think they are of any consequence (Rec., 963).

It is my idea that my scale should be applied to all the commodities involved in this case. I see no reason for a joint line scale on these heavy moving commodities over the trunk lines.

In the Brick Case, of course there was a joint line scale prescribed for distances under 100 miles, and I think the carriers themselves have used that distance in most of their adjustments on heavy moving commodities, such as cement and lime, but in the study I have made of it, I don't see any reason why there should be any joint haul for above 100 miles.

I think there is clay and shale shipped into this territory to manufacturing plants, but to my knowledge none is used for road building purposes. As to the scale offered by the complainants here we of course would feel the same towards that scale as we do towards the (Rec., 964) carriers' scale, in view of the fact that the progres- [fol. 424] sion is certainly too rapid at the beginning. It creates a situation whereby the short haul traffic certainly

has to bear an undue proportion of the charge as compared with the low haul traffic.

Q. Have you made your scale to fit anybody's particular pits?

A. No, sir, that is unfortunately I had no particular pits to fit, and I tried to make a scale that I thought would not result in too much revenue, and at the same time progress properly and uniformly, and having in mind also that probably the breaks in these scales should be for greater distances than five miles, as proposed by the carriers and by Mr. Brooker; of course, that is just a difference of opinion, that is all; the Commission may be able to decide that.

Cross-examination.

By Mr. Walker:

When I dealt with Exhibit 239 I merely said that Mr. Crane yesterday suggested that there might be a situation from LaGrange to Chattanooga we might want to depart from because of local competition and that we had in fact done it (Rec., 965).

I have stated before that in most of the states surrounding Georgia and Alabama they have these low municipal rates and those rates move about 80% of the traffic. Obviously I didn't have the tonnage to consider the revenue effect the adoption of my scale would have on the carriers' scale in the Southern Territory as a whole. I heard Mr. Crane's testimony that only 20% of these commodities moving over the Southern moved in Georgia (Rec., 966).

There is a movement in the Carolinas on municipal rates, I don't know how much. They have municipal rates in North Carolina and I think in South Carolina, but none in Alabama or Georgia. I made that statement as being the fact as regards the Southern Railway.

[fol. 425] By Mr. Brooker:

The distance from Stone Mountain to Atlanta is 14.9 miles, from Lithonia to Atlanta is 24 miles. There was no particular reason for my making my first grouping 10 miles instead of 15 under the Georgia Scale. I merely set about making a scale that would progress properly and I used

the terminal of 40¢ which I thought might be all right (Rec., 967).

I represent certain Lithonia interests in this proceeding But my scale was not constructed with the idea of giving Stone Mountain the same rate as Lithonia to Atlanta. It does have that effect, and the examination of the scales you have compared in your exhibits shows some of them break either at 20 or 30 miles and mine break at 10 to make a symmetrical scale. The Georgia Scale does provide for a certain differential between those two points today but from a strictly equitable standpoint I don't think there should be any difference for those pits that are within a radius of 25 miles to Atlanta (Rec., 968).

By Mr. Gwathmey:

I didn't say 80% of the sand and gravel in other states moves under special or municipal rates. I said I had in mind that the bulk of the movement in Georgia is for road-building purposes and I presume that was the fact in other states, especially the Carolinas and Florida. I have not investigated to ascertain the proportion of this traffic in other states under municipal rates. I imagine the preponderance of the movement in Florida or Louisiana are on the lower rates. That is hearsay because I have not been able to verify it. The principal difference between my scale and the railroads' scale is that my scale represents substantially lower rates for the relatively shorter distances (Rec., 969).

[fol. 426] If my scale were substituted for the railroads', it would not, as far as Atlanta is concerned, mean a substantial reduction in rates for the shorter hauls. I have not charged myself with the duty of looking out for the interests of the particular shippers and did not suppose I should give much consideration to the interests of the railroads. I probably was more considerate of the interests I represent; we are the fellows who pay the bill and are vitally interested in what these commodities will cost us. I don't think there is so much difference between our scales on what would be the earnings per ton mile for a distance of 500 miles (Rec., 970).

For 300 miles my proposed rate would be $1.50, which is 5.2 mills per mile. Yes, I propose to apply that scale

whether the haul is over 1 or 2 or 3 lines. I have not divided the rate where 3 lines participated in the haul, each one hauling it 100 miles.

You have the same situation in brick, and you proposed the same situation in your cement and lime rates, all on a single line scale for 100 miles. I don't know that if three roads participated in a haul of 300 miles and got 50¢ apiece for a haul of 100 miles that it would be a reasonable maximum rate. If we didn't have anything to consider but just these commodities it might be a different story. Under the law you can haul it, as far as municipal rates are concerned, for nothing (Rec., 971).

That might aid you in some cases. I recollect some men at the Georgia Commission in 1921 trying to show you that but they didn't get very far.

(Witness excused.)

[fol. 427] E. M. PRICE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

My name is E. M. Price. I am connected with the Georgia Public Service Commission, with the title of Rate Expert, which position I have held since October 1st, 1919. Prior to that time, and subsequent to 1889, I was connected with various carriers in Southern Territory in various capacities.

The matter of rates on sand, gravel, crushed stone, etc., had been under consideration by the Georgia Commission for several years prior to its final order of February 25, 1925. In 1916, the Georgia carriers filed petition with the Georgia Commission for approval of a general revision of all rates, and after hearings lasting over a period of several months, the Commission issued an order on April 3, 1918, to become effective September 15, 1918, which revised all class and commodity rates within the state; however, the effective date of this order was later suspended by the Commission, due to the fact that the carriers were taken over by the Government (Rec., 972) under Federal control, and this condition lasted until March 1, 1920. Realizing the necessity for a general revision of all rates the Georgia

Commission on July 14th, 1921, directed a Rule Nisi to all Georgia carriers to submit to the Commission schedules of class and commodity rates that would remove all discriminations and would in the aggregate preserve the carriers' revenues. The hearings on this show cause order began in September, 1921, lasting over a period of several weeks, and as a result of these hearings the Commission first prepared and submitted to carriers and shippers for criticism schedules of class rates, and after these criticisms the revised class rates were ordered into effect May 1, 1923. [fol. 428] Subsequent to the class rate order through the same method the Commission has authorized revised rates on cotton, canned goods, brick and other clay products, road oil, velvet beans, cottonseed, peanuts, waste wood, furniture, limestone, iron and steel articles, and sand, gravel, crushed stone, etc. Attention is directed to the work accomplished in this general revision that your Commission might know that the sand and gravel adjustment has not been selected by the Commission for the purpose of any special treatment, but is only a part of the general revision, which the Commission now has under consideration, it being the purpose of the Commission to continue these revisions until it has completed the work of revising all rates in Georgia (Rec., 973).

In Section 5, of the commodity rate orders, the Georgia Commission has provided: "That in no instance shall the rates on the commodities covered by this order be higher between any points in Georgia than the interstate rates contemporaneously in effect in the same commodities, between points in Georgia and points in other states, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul."

In Section 8, the Georgia Commission has provided: "In instances where the carriers establish between any points lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained."

The Georgia Commission, of course, has no intention of attempting to control or fix the interstate rates through Section 5, it being the purpose of the Commission to protect the Georgia rate payer against any discriminations that might be brought about through the revision author-

ized in the Georgia Order, and Section 8, of course, was to take care of the long and short haul situation.

[fol. 429] On account of the provisions in Sections 5 and 8, it was necessary for the carriers in several instances, including the rates on sand and gravel, etc., to petition the Commission for a suspension of the effective date, in order that their interstate tariffs might be readjusted to clear the Georgia rates (Rec., 974).

The order authorizing the revised rates on sand, gravel, crushed stone, etc., was issued February 25, 1925, to become effective April 1, 1925. The carriers were unable to comply with Sections 5 and 8, and therefore petitioned the Commission to suspend the effective date until July 1, 1925, which was granted. It later developed that the carriers were unable to clear the Georgia rates with their interstate rates by July 1st, and therefore petitioned the Georgia Commission for a further suspension until August 1, 1925, which was granted. After the rates had been published by the carriers to become effective August 1, the sand, gravel and slag interests in Alabama and Tennessee filed petition with your Commission for suspension, which was assigned to I. & S. Docket 2470. Your Commission declined to suspend the rates that were based on the Georgia Scale, except rates published by the Louisville & Nashville R. R., which your Commission did suspend where they were shown to exceed the Georgia Scale, and in this connection we would like to ask that our testimony and evidence be considered in Docket 17517, and the other related dockets, which are involved in this proceeding, and that you also take into consideration the record that was made in I. & S. Docket No. 2470, at the time you declined to suspend the rates involved in that docket. Is that proper, Mr. Commissioner, that we ask for that consideration? (Rec., 975).

[fol. 430] Commissioner Lewis: I can't pass on that right now.

Mr. Price: Is there any objection to it?

Mr. Cotterill: I have none.

Mr. Gwathmey: No.

Commissioner Lewis: All right.

Mr. Price: That docket is involved in this proceeding here, 2470, we are simply asking that you take into consid-

eration the record that was made to decline to suspend the interstate rates into Georgia.

Commissioner Lewis: Oh, yes.

Mr. Price: We did that to avoid making up additional exhibits.

In fixing the Georgia rates, the Georgia Commission has had in mind at all times, that it was not the representative of any particular interest, but that three distinct interests are involved in these adjustments; first, the carriers who are entitled to such rates as will give them a return on the fair value of their property devoted to the public use, which your Commission has said is 5.75%. Second, the shipper or producer who is interested primarily in the relationship with his competitor, more than with the measure of the rates, and third, the consumer who finally pays the bill and is therefore more vitally interested in the measure of the rate. The Georgia Commission has endeavored to represent these three interests in prescribing rates in Georgia, and I will state further that in appearing here today we are still representing these same interests (Rec., 976).

As I have already stated, a very careful study was made, not only of the rates existing in Georgia, but throughout [fol. 431] this territory, and in prescribing these rates the Georgia Commission feels that they are responsible, not only for Georgia intrastate application, but could well be used as a measure for interstate application throughout the Southern Territory.

The evidence which I will submit, Mr. Commissioner, is designed to give you a picture of the rate situation on these commodities, as found by the Georgia Commission prior to the issuing of its order, and I would now like to file my Exhibit No. 244, consisting of 28 pages. This exhibit has been distributed to all interested.

Commissioner Lewis: The exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 244, Witness Price.")

Mr. Price: Sheet No. 1, shows the various rate tables and their application, being self-explanatory. Mr. Commis-

sioner, on this exhibit was printed a description that I have failed to furnish a list of the Class A and Class B lines that are referred to in these rate tables; I can state the Class A lines, all other lines being Class B lines in the state, or I can prepare another exhibit (Rec., 977).

The Atlantic Coast Line R. R., Atlanta & West Point, R. R., the Atlanta, Birmingham & Atlantic R. R., Central of Georgia Ry., the Georgia R. R., Seaboard Air Line Ry., Southern Ry., Nashville, Chattanooga & St. Louis Ry., and the Louisville & Nashville R. R.; that represents the Class A lines in Georgia, all other lines in Georgia are Class B lines. They consist of the so-called short lines.

Now, Mr. Commissioner, while we are on Sheet No. 1, a great deal has been said in regard to the hump in this [fol. 432] scale at 110 miles. As I have previously stated, these rates were submitted to the carriers and shippers for criticism before any final order was passed, and the scale that was submitted at that time, and at 110 miles that was 5½¢, there is a typographical error that occurred in the reprinting of that scale and was not detected until after the order took effect. As the scale was criticized, at 110 miles that was 5½¢, or $1.10 a ton. We have not taken any steps to correct it (Rec., 978), because when the Commission did detect it, the order had already taken effect, and we then heard rumblings of this proceeding, and the Commission decided that the best thing to do was to wait and see just what the outcome was before it took any steps to make the correction.

My attention has just been called there to an error over under the description there under sand, it does not state the amount, the seventh line, it does not state the amount less than Commodity Group No. 22, that should be 10¢.

Sheet No. 2 is a statement of the rates on sand and gravel, proposed by carriers to the Georgia Commission in the 1917 proceeding, the rates authorized by the Georgia Commission following the 1917 proceeding, and also the rates for the Class A or trunk lines, in 1925. It will be noted that in the 1917 proceeding the Commission authorized practically the same rates as proposed by the carriers, and provided the same rates for both sand and gravel. It will be noted that the 1925 Order provides much higher rates for gravel, for distances above 50 miles, than was

proposed by the Carriers in 1917, and that the general level of sand rates fixed in the 1925 Order are much higher than the sand and gravel rates proposed by the carriers in the 1917 proceeding. The 1917 rates as shown here have been treated by the increases under General Order No. 28, Ex Parte 74, and the July 1, 1922, reductions (Rec., 979).

[fol. 433] These are single line scales on Sheet No. 2.

Sheet No. 3 is similar to Sheet No. 2, except that Sheet No. 3 incoudes the rates on sand, gravel, crushed stone and slag. It wll be noted that in the 1917 case, the carriers submitted to the Georgia Commission higher rates on crushed stone and slag, than on sand and gravel, whereas the Georgia Commission in 1925 grouped washed gravel, crushed stone and slag, and provided higher rates on all of these commodities, than on sand, unwashed gravel, and the other crude materials, it being the opinion of the Commission that this represents a proper grouping of these materials. Washed gravel, slag and crushed stone come in direct competition with each other and therefore in our opinion should be grouped together. Common sand, unwashed gravel, crude clay, chert, etc., is of a lower grade material, and does not come in direct competition with the washed gravel, slag and crushed stone, and therefore in the opinion of the Georgia Commission these crude materials should be grouped at a lower rating than the others.

Sheet No. 4 is a statement of the rates on sand, gravel, crushed stone and slag, prescribed by the Interstate Commerce Commission, in what is known as the Meridian Case, I. C. C. 60-5 (Rec., 980).

Clay gravel was described as unwashed gravel and I should say that would include sand gravel if it is unwashed. We have just two groups, if it is not gravel, slag, crushed stone or gravel washed, it would go in the other group. Unwashed gravel is given the same treatment as sand.

[fol. 434] The figures shown on this exhibit as the carriers' figures were taken from an exhibit filed by the carriers in I. & S. Docket 2470. Prior to the revision made by the Georgia Commission, there has been practically no uniformity of rates on these materials between points in Georgia, and as for that matter I might say on interstate traffic throughout the Southern Territory, the rates in effect prior to August 1st, having been put in by the carriers at various

times, and in most cases each adjustment being made to take care of some particular need, and so far as Georgia is concerned, the rates were invariably much lower than the old Class P rates provided for in the Commission's classification. I will now refer to my Sheets Nos. 5 and 5½, which illustrate this condition (Rec., 981).

Sheet No. 6 is a statement of rates on sand between various inter- and intrastate points, and is somewhat similar to Sheet No. 5, except that in Sheet No. 6 we have included interstate points.

Sheet No. 7 is a statement of rates on cement gravel, from Steele's Creek, S. C., a point on the Charleston & Western Carolina R. R., to various points that were in effect prior to investigation in 83 I. C. C. 436. These rates were stated in the tariff in cents per cubic yard, and in cents per car, and in reducing them to cents per ton, we have observed 3,000 pounds, as representing a cubic yard, it being our information that this is the average weight for cement gravel, and this at least to an extent is confirmed by the fact that the tariff provides a minimum of 20 yards, and where the rates are stated in cents per car, the minimum is provided as 60,000 pounds. The sheet is self-explanatory, and shows that with but one exception the Georgia rates bring about increases.

[fol. 435] Sheet No. 8 is a statement of rates on gravel, paving or cement, from Jackson, S. C., a point on the Charleston & Western Carolina R. R., to various points, compared with the rates of the Georgia Commission, these rates being of a later date than the rates shown on Sheet 7, but were being appliel by the carriers prior to the investigation in 83 I. C. C. 426.

We understand cement gravel is an unwashed gravel similar to chert and so treated.

Sheet No. 9 is a statement of rates on sand to Chattanooga, Tenn., from various Georgia points, compared with the rates of the Georgia Commission.

Sheet No. 10 is a statement of rates on sand from Saulsbury, Tenn., to various points, compared with the rates of the Georgia Commission. Saulsbury, Tenn., is a point on the Memphis & Charleston Division of the Southern Ry. just north of Memphis.

Sheet No. 11 is a statement of rates on gravel, slag and crushed stone, which apply intrastate in North Carolina, compared with the Georgia scale.

Sheet No. 12 is a statement of rates on gravel, from Wilmington, N. C., to various points, compared with the rates of the Georgia Commission. It will be noted here that — but one or two exceptions the Georgia Scale is much higher than the rates now being applied from Wilmington to the points shown on this sheet, it will also be noted that these interstate rates are lower than intrastate rates applicable in North Carolina.

Sheet No. 13 is a statement of rates on sand from Wilmington, N. C., to various points, and here again I direct attention to the comparison with the Georgia scale and to the fact that they are lower than the North Carolina Scale (Rec., 983).

[fol. 436] Sheet No. 14 is a statement of rates on gravel from Mitylene, Ala., a point located on the Seaboard Air Line near Montgomery, to various points.

Sheet No. 15 is a statement of rates on gravel, from Gravel Siding, Miss., a point on the Memphis Division, of the Southern Railway, to various points.

Sheet No. 16 is a statement of rates on crushed stone between various interstate and interstate points in Southern Territory. In discussing this sheet, I wish to call attention to the fact that in the 1917 case before the Georgia Commission, the carriers submitted higher rates on crushed stone than on sand and gravel, but crushed stone was segregated from sand by the Georgia Commission, notwithstanding the usual custom of the carriers to apply higher rates on crushed stone than on gravel; the Georgia rates in many cases produce very material increases over the present rates. I would like to make a correction on this sheet in the distance from Elberton, Ga., to Jacksonville, Fla., it is now shown as 279 miles; if you will follow the distance down, you will see that that should be 347 miles, and the Georgia rate should be $1.70.

Sheet No. 17 is a statement of rates on slag from Birmingham, Ala. to various points (Rec., 984).

Sheet No. 18 is a statement of roadway material rates applying intrastate in Florida, and I will not make any comment on that because there has been enough said of Florida already.

[fol. 437] Sheet No. 19 is a similar statement showing the rates that are confined to Jacksonville, Tampa and St. Petersburg.

Sheet No. 20 is a comparison of the intrastate rates in Wisconsin with the Georgia Scale.

Sheet No. 21 is a comparison with the rates in Missouri.

Sheet No. 22, Kansas.

Sheet No. 23, Iowa.

24, these rates have already been discussed by a previous witness.

Sheet No. 25 is a statement of the net Railway Operating Income for Class 1 carriers for the 11 months period ending November 30th, which it will be noted shows the carriers in the Southern District earned a return of 6 percent, the greatest net return of any district or region in the United States, except the Pocahontas Region. This earning is in excess of the 5.75, which your Commission has stated was reasonable, and the Georgia Commission is not complaining of the return being earned by the Southern carriers, which of course includes our Georgia carriers, and on the present showing would not advocate any general horizontal reductions in this territory, but we don't think this is the time for general increases in revenues, but we do think that now is the most opportune time we have had (Rec., 985) to make needed revisions, such as has been accomplished by the Georgia Commission. As I stated in the beginning of my testimony, the Georgia Commission feels its responsibility to the carriers in Georgia, and in making the revisions, which have already been accomplished, the Commission has endeavored to prescribe rates that would be reasonable throughout the territory, [fol. 438] regardless of the effect on the Georgia interstate situation, and I believe this effort is reflected in Sheet No. 26, which is a statement of operating revenues for the Trunk Lines in Georgia for the six months period ending November 30th, showing the relationship of the Georgia earnings to the system earnings of these lines. It will be noted that 14.6 percent of the mileage of the Atlantic Coast Line Railroad is located in Georgia, and Georgia provided during this period 19 percent of Coast Line's gross revenues, and 19 percent of its net revenues, and 22 percent of the increased net revenues 1925 over 1924. It will be noted that mile for mile Georgia provided

more than its proportionate share of both gross and net revenues; the same comparisons are made with the other lines, and with the same results with the exception of the Louisville & Nashville Railroad. I have selected this period of 6 months, for the reason that it reflects the earnings under the rates prescribed by the Georgia Commission on sand, gravel, etc., both as to the reductions prior to August 1st, 1925 and the increases effective on August 1st, 1925 (Rec., 986).

Sheet No. 27 is a statement of operating revenues, for the same period of six months ending November 30th, but shows only the Georgia proportion, and shows the percentage of increase in net earnings on Georgia Traffic 1925 over 1924. One of the most significant things about this [fol. 439] case is that the Atlantic Coast Line is the only Trunk Line a party to this complaint against the Georgia rates, and only a few of what is known as the Short Lines; while this sheet includes all of the Trunk Lines it only includes the short lines that are a party to the complaint. It will be noted that the net operating revenues of the Atlantic Coast Line on Georgia Traffic in 1925 shows an increase of 122.7 percent over 1924. The Seaboard Air Line shows an increase of 105.7 percent. The M. D. & S. Railroad, which is among the short lines, shows an increase of 56.7 percent.

Sheet No. 28 is a statement of gross operating revenues for the six months ending November 30th of the same lines shown on Sheet No. 27. It will be noted here that the Atlantic Coast Line has an increase in gross operating revenues on Georgia Traffic of 42.9 percent. These exhibits in my opinion indicate that Georgia is either operating under a generally higher level of rates than the balance of the territory served by these carriers or that Georgia is providing for these carriers a higher density of traffic than other territory served; certainly these exhibits do not (Rec., 987) indicate that the rates fixed by the Georgia Commission are unreasonably low.

Now, Mr. Commissioner, with regard to the charge that the Georgia rates discriminate against interstate commerce, [fol. 440] we do not deny that there are some rates applying interstate into Georgia that are higher than the Georgia scale, and this is illustrated by my exhibit, but it must be remembered that prior to the effective date

of the Georgia rates there were a great many interstate rates into Georgia much lower than the Georgia rates, which would have created violent discriminations against Georgia, if they had not been brought up to the level of the Georgia rates, and further that the carriers in making their interstate revision only revised such rates as were lower than the Georgia scale, and so far as we know made no revision of their rates that happened to be higher than the Georgia Scale.

The Georgia scale represents as near as practicable a general level of what might be considered as the going rates on these materials in the Southern Territory, and as applied to Georgia traffic represent material increases in carriers' revenues, and in our opinion if applied inter and intrastate throughout the Southern Territory, would cause increases in revenues (Rec., 988).

That closes what we have to say in 17517, which we would like to have considered in the other cases, and I would like to make a statement, I don't know whether I am in order here as to argument or not, but in regard to the complaints that have been brought by the Alabama Commission and the other Alabama interests, against the Georgia rates, we would like to show on the record that the Ala- [fol. 441] bama rates are not under consideration and would not be affected by the outcome of this case, and any order issued by your Commission disturbing the Georgia rates would freeze the Georgia rates and would increase the rates from Georgia Territory into Alabama, where it has been shown there is a very considerable movement, with no relief in Alabama, the Alabama Commission could then fix their rates at will, and hold them in effect, and the carriers themselves could not relieve that situation. We wanted to ask that the present rates from Georgia into Alabama be not disturbed under the present conditions.

That closes my testimony.

Cross-examination.

By Mr. Gwathmey:

The apportionment of the carriers' revenue shows on my Sheet 26 Georgia is based upon the carriers' reports to the Georgia Public Service Commission. I cannot state

the basis for the apportionment because the reports are filled out on a form that is uniform and sworn to by the comptrollers and auditors of the various lines (Rec., 989).

I am unable to state whether such reports purport to be confined to traffic originating in Georgia or whether they include revenues from traffic passing through Georgia which on some basis is apportioned in part to Georgia business. Statements have been made by accounting officers [fol. 442] of the Georgia lines at a recent meeting that the present State proportion earnings do not include any overhead traffic and these statements were made because a Southern states Commissions have under consideration the adoption of a uniform system of accounts for carriers (Rec., 990).

If you have in mind, Mr. Gwathmey, a movement from Columbia, S. C., to Jacksonville through Savannah, that would be Georgia overhead traffic. I do not understand that any part of that revenue would be shown in reports to the Georgia Commission. But my thought is, considering the present rate of return shown by the carriers in the Southern region as to the pripriety of authorizing rates which would involve an increase in the revenue of the carriers as a whole on any particular class of commodity, it depends on what we might have under consideration. If you have reference to the general revisions that the Georgia Commission is making, I might be able to answer you; if you have reference to some specific movement, my answer might be otherwise. If you understood my statement to mean that in view of the rate of return shown by the figures submitted by me on the movement of sand and gravel, there should be no rates authorized on this traffic that would carry with them an increase in revenue in the aggregate (Rec., 991), then you did misunderstand. I did not make that statement.

I said the carriers were now earning in excess of 5 3/4ths percent that the I. C. C. say they are entitled to, but under [fol. 443] that showing the Georgia Commission would not advocate any horizontal reductions in the carriers' revenue. I said I did think that under the present showing it is an opportune time to make needed revisions on commodities such as those now being considered (Rec., 992).

I have no personal knowledge that gravel moves from Wilmington, N. C., but I do know that the rates shown in

this exhibit have been brought forward in a very recent issue of Mr. Cotterill's tariff.

Mr. Cotterill: I have no questions, but I would like the privelege of indicating that as to the matter of freezing the Georgia rates or changing the interstate rates from Alabama into Georgia without appropriate revision within Georgia, I am quite confident that I would be authorized if the opportunity to present the question were here presented to me, to say that the Alabama Commission would very gladly conform itself to the conclusions of the Interstate Commerce Commission in these cases, and that it would under any circumstances conform itself to the suggestion of Mr. Price that any revisions growing out of this case be contemporaneous as to state and interstate traffic. I will go further and say that between (Rec., 993) now and the time of the argument I would consider that under the circumstances it would be appropriate for me to make inquiry of the Alabama Commission as to whether I have correctly stated its point of view, and whether I have or not I shall at the time of the argument make a formal statement covering that subject.

[fol. 444] Mr. Gwathmey: If any statement of that sort is made for the record, I assume that it will be understood that it is made officially on behalf of the Alabama Public Service Commission.

Mr. Cotterill: Yes, it will be at that time; I was only attempting now to indicate my own judgment based upon the points of view of that Commission which have here been expressed, as well as individual conversations such as their point of view, and also I am quite certain that I would not hesitate to state them now officially if an opportunity presented itself simply to consult them, but in any event I will promise that some such statement will be made officially and formally at the time of the argument.

Mr. Burchmore: I call attention to the fact that Mr. Aldredge had that opportunity and would not avail himself of it on cross examination.

Mr. Cotterill: Mr. Aldridge is the chief examiner of the Alabama Commission; he was not representing them as such, he was a witness in the case, and would not assume authority on (Rec., 994) a matter of that character to speak of his Commission, but in my capacity as counsel, I

don't doubt that they will authorize him to make some such statement.

[fol. 445] (Rec., 1692)

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

Docket No. 17763

ROQUEMORE GRAVEL COMPANY et al., Complainants,

vs.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al., Defendants

Before E. H. Waters, Examiner

Atlanta, Ga., November 26, 1928.—10:00 o'clock a. m.

Met pursuant to notice.

[fol. 446] Proceedings

Exam. Waters: Gentlemen, come to order.

The Commission has set for further hearing at this time and place, docket No. 17517, Rates on Chert, Clay, Sand and Gravel within the State of Georgia; and

Docket No. 17763, Roquemore Gravel Company et al. versus Atlanta, Birmingham & Atlantic Railway Company et al.

We will now take the appearances orally, and carriers may announce theirs first.

APPEARANCES OF COUNSEL

Mr. Gwathmey: Frank W. Gwathmey, appearing for the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Atlanta & West Point Railroad Company, Western Railway of Alabama, Georgia Railroad and Nashville, Chattanooga & St. Louis Railway.

Mr. Walker: L. V. Crane and H. L. Walker, for the Southern Railway System Lines.

Mr. Morris: E. D. Mohr and Ben F. Morris, for the Louisville & Nashville Railroad Company.

Exam. Waters: Is Mr. Mohr present?

Mr. Morris: Mr. Mohr is not present.

Mr. Streyer: John A. Streyer, for the American Short Line Railroad Association.

Exam. Waters: Is that all for the carriers?

Exam. Waters: We will now have the shippers' representatives (Rec., 1699).

[fol. 447]. Mr. Cotterill: Charles E. Cotterill and M. M. Caskie, of Montgomery, Ala., for the complainants.

Mr. Ribe: A. J. Ribe, for the Birmingham Slag Company, Birmingham, Ala., and The Montgomery Gravel Company, Montgomery, Ala.

Mr. Angle: H. S. Angle, for the Dixie Sand & Gravel Company.

Mr. Linthicum: Slaughter Linthicum and R. H. Cobb, for the Piedmont Corporation.

Mr. Webster: L. E. Thorpe, Consolidated Quarries, Inc., of Lithonia, Ga., Willis Galloway, Georgia Limerock Company, Perry, and J. Prince Webster, attorney for both companies.

Mr. Brooker: Edwin Brooker, for the Atlanta Sand & Supply Company, and the Allen Sand Company.

Mr. Graves: G. B. Graves, of Warrenton, Ga., appearing in his own behalf.

Mr. Moore: M. C. Moore, for the Mississippi Railroad Commission. We are not directly interested, but I will enter an appearance for them.

Mr. Youmans: H. T. Youmans, for the Ellenton Gravel Company, Ellenton, S. C.

Exam. Waters: If that is all the appearances for the shippers, we will have the other appearances (Rec., 1700).

[fol. 448] Mr. Watkins: Mr. Examiner, you mean the shippers on the side of the complainants?

Exam. Waters: Yes sir.

Mr. Watkins: I represent shippers who are on the defensive side.

Exam. Waters: We will have the other appearances in the order that you announce them.

Mr. Watkins: Edgar Watkins and Edgar Watkins, Jr., Harry T. Moore, and E. H. Hart, for the Georgia State Highway Commission, Fulton and DeKalb Counties, Ga., City of Atlanta, Ga., Atlanta Freight Bureau, Morac Sand Company of Junction City, Brown Brothers of Junction City, and other Georgia Sand and Gravel Dealers whose names appear on the appearance blank. The Georgia Granite Quarries Company, of Lithonia, Ga.; Mr. Albert E. Mayer also represents these Georgia sand and gravel companies, and will be here a little later.

Mr. Burchmore: For the Georgia Public Service Commission, Mr. S. J. Smith, Jr., special attorney for the Commission, E. M. Price, rate expert, and John S. Burchmore, as special counsel.

Exam. Waters: Does that conclude the appearances?

STATEMENT BY EXAMINER WATERS

Exam. Waters: I will make a brief statement of the issues. (Rec., 1701.)

[fol. 449] Upon petition of carriers respondent in No. 17517, Rates on Chert, Clay, Sand and Gravel within the State of Georgia, the Commission on the 4th day of June, 1928, reopened the said proceeding for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent carriers on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed in its report and order on January 21, 1927, in said No. 17517, causes or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

The Commission at the same time reopened its No. 17763, Roquemore Gravel Company, et al. versus Atlanta, Birmingham & Atlantic Railway Company, et al., solely on the issue as to whether the intrastate rates and minimum

weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, in shipping sand, gravel (Rec., 1702) (washed or unwashed) and clay [fol. 450] gravel from Montgomery, Ala. and Chattanooga, Tenn. to destinations in the state of Georgia.

COLLOQUOY

Mr. Burchmore: Mr. Examiner, on behalf of the Georgia Public Service Commission, I desire to present a point that as the issues are defined in your opening statement there is no jurisdiction in the Interstate Commerce Commission to enter an order in this proceeding which would have the effect or intended effect of making any change in the intrastate rates for the transportation of chert, clay, sand, gravel and other materials within the state of Georgia. That question is jurisdictional and goes to the authority of the Interstate Commerce Commission under the terms of the interstate commerce act.

I have a second point to urge, that the Georgia Public Service Commission objects to the use in the determination of the issues now presented by these proceedings of the testimony taken at the sessions of February 15, 16, 17, 18, 19 and 20, 1926, in docket No. 17517 and related cases, and the exhibits at that time offered, on three grounds:

First, that the issues now presented to the Commission (Rec., 1703) as defined by the order, and as defined by the complaint, and as defined by your opening statement, are not the same issues that were presented at that time, in those proceedings.

Second, that the testimony then given throws no real light on the conditions now obtaining and which will obtain [fol. 451] for the future, the question before the Commission having to do only with rates for the future and not for the past; that conditions have materially changed since February, 1926, a period of nearly three years, and that much of the matter then in evidence was immaterial to any issue now before the Commission, and much of it would be

changed if now given, by reason of the changes in conditions.

I desire to make that objection and ask that that record shall not be considered.

Mr. Watkins: Mr. Examiner, on behalf of the shippers for whom I have entered an appearance, I wish to make the objection that under the pleadings in this case the Commission has no jurisdiction whatsoever of the 13th section case, and that the petition in that case cannot be filed as a supplemental petition because it is based on facts arising after the hearing of the original case, and for the other reasons specifically set forth in my answer heretofore filed in this case.

Mr. Cotterill: I take it, gentlemen, that none of the (Rec., 1704) objections you have now stated is of a kind that you wish the Examiner to rule upon.

Mr. Watkins: I do not know that he should rule upon it, but——

Mr. Burchmore: I think the Examiner should rule as to [fol. 452] my objection to that evidence. I think that as to the jurisdictional question, we would have to have a ruling by the Commission. I think on my objection to the evidence he should rule, but it is possible that he has received instructions from the Commission.

Exam. Waters: Rule on what, Mr. Burchmore?

Mr. Burchmore: On the use of the former record.

Exam. Waters: You are objecting to that as I understand it?

Mr. Burchmore: Yes, sir, we must know whether that record is to be used.

Mr. Gwathmey: Before the Examiner announces his ruling I would like to say that the carriers have assumed and still assume that the original record in this same proceeding will continue to be a part of the record in the case. We have not come here prepared to proceed on any other assumption, and in that connection I would call attention to the fact that the order reopening the case expressly states that it is reopened for further ruling.

Mr. Cotterill: Mr. Examiner, to what Mr. Gwathmey has (Rec., 1705) said I respectfully add only a few words. An objection of the kind indicated conceivably might have some merit if we were here trying a new case, but all of the for-

mal orders and the formal steps by which we have reached [fol. 453] the present point conclusively establish that what we are doing is to proceed in a case that is not yet completed; consequently the suggestion that a part of the record in the case on trial is to be excluded is the same as to say that you may stop in the middle of a case, and reject half of it, and try it over again, without any new proceeding being inaugurated. I think under the conditions it must be clearly apparent that there can be no objection to a continuation in this record of a proper record already made in a case not yet disposed of.

I further say that if there be any changed circumstances pertaining to the issues now under inquiry, any party would have opportunity to submit such additional evidence as would in these respects correct the record, and they would lose no substantial rights.

Mr. Watkins: In my statement of objections, I made no reference to the use of the record, because I did not think that question had arisen. Inasmuch as counsel have now stated that they expect that record to become a part of this, I wish to register an objection to a consideration of that record here as part of this record, or as in the evidence (Rec., 1706) offered in this record.

Exam. Waters: Gentlemen, as far as my ruling is concerned my mind is pretty well make up. The record is open for the consideration of the matter involved in these proceedings, and I rule that it be considered so opened, and [fol. 454] for whatever use the parties may wish to make of it.

Mr. Burchmore: I would like to note an exception.

Mr. Cotterill: Mr. Watkins, I assume that as to the point you make with respect to the pleadings in the case, it is not a point as to which you seek a ruling at this time?

Mr. Watkins: I make the point, but I do not assume that the Examiner would determine it at this time.

Mr. Cotterill: I asked the question because none of the counsel in their statements have directed themselves to that.

Mr. Watkins: We do object at any time when it may be opened to be considered, to any record heretofore made, the clients of mine not having been in the former case, and this being to them entirely new.

Exam. Waters: Whom did you represent in the former case?

Mr. Watkins: The Atlanta Freight Bureau, in an indirect way.

Exam. Waters: You represent them now?

Mr. Watkins: Yes sir.

Exam. Waters: You proposed a scale, didn't you? (Rec., 1707.)

Mr. Watkins: Yes sir, some of my clients I did represent at that time, and some of them were not in that case at that time.

Mr. Burchmore: Mr. Examiner, I will ask your indul- [fol. 455] gence to make this personal statement on the record, that in the former hearing in this case, in 1926, I entered an appearance, and then represented the Tri-State Road Material Association composed of producers in the Mississippi Valley. I do not represent them in these proceedings. I understand they have no interest whatever in the subject matter of these proceedings, and are not appearing in them. My sole appearance and representation here is as counsel for the Georgia Public Service Commission, for whom I did not appear, and had no contact with them at the previous sessions. I make that statement so as to avoid any confusion over my former appearance.

Exam. Waters: All right, gentlemen, let us get going.

Mr. Gwathmey: Strictly speaking, Mr. Examiner, I would assume that inasmuch as there is a formal complaint case to be heard, that the complainants would have the right, if they chose to insist upon it, to proceed first. However, I understand that Mr. Cotterill, who is counsel for those complainants, that he considers it desirable that the carriers should present certain exhibits showing the rate situation, and it is agreeable to me to proceed now with (Rec., 1708) all of the carrier witnesses, or to proceed with some of them, and stand aside for the complainants if they wish to be heard before we get through.

[fol. 456] R. J. Doss was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am general freight agent of the Atlantic Coast Line with headquarters at Wilmington, N. C., and was a witness for the Company at former hearings in these proceedings.

(Thereupon it was stipulated between counsel that the qualifications of all witnesses who testified at prior hearings covering the subject matter upon which they shall testify, shall be conceded, unless directly questioned.) (Rec., 1709.)

In my direct testimony in these cases given at the hearing held in Atlanta, February 15-20, 1926, I outlined in detail the history of the rates on sand, gravel, crushed stone, and so forth, between points in Georgia, as well as the interstate rates of the Atlantic Coast Line Railroad, and in connection therewith fully described the circumstances under which the Atlantic Coast Line and certain other Georgia carriers filed with the Interstate Commerce (Rec., 1710) Commission petition dated June 5, 1925, which resulted in the institution of the proceeding known as docket 17517.

It seems unnecessary to repeat that testimony at this time, especially so since the report of the Interstate Commerce Commission in docket 17517, 122 I. C. C. 133-176, covers the situation so fully in its relation to the Georgia intrastate rates.

[fol. 457] The previous handling of the matter is also outlined in chronological order in the supplemental petition filed on behalf of respondent carriers operating in the state of Georgia with the Commission April 12, 1928.

The rates prescribed by the Interstate Commerce Commission in its order in docket 17517 dated January 21, 1927, were published in Agent Glenn's tariff I. C. C. A-606, effective August 1, 1927. The current tariff is I. C. C. A-655.

The rates prescribed to and from the Florida peninsula in the order of March 5, 1928, were published in Agent Glenn's tariff *O*. C. C. A-668, effective August 2, 1928, which is the current tariff.

Attention is here called to the reference at page 169, 122 Interstate Commerce Reports, to the Georgia situation, the

Interstate Commerce Commission having expressed the view that the Georgia Commission would co-operate in authorizing such revisions as may be necessary to bring the Georgia rates into harmony with the interstate adjustment therein (Rec., 1711) approved.

Following the issuance of the Interstate Commerce Commission's report and order dated January 21, 1927, and not having advice that the Georgia Public Service Commission expected to take any further action in the matter, the Georgia carriers, by petition dated May 23, 1927, requested the [fol. 458] Georgia Commission to approve intrastate in Georgia the same mileage scales as were fixed by the Interstate Commerce Commission in its order dated January 21, 1927, in docket 17517. The hearing on this petition was held by the Georgia Public Service Commission in its offices in Atlanta on July 25, 1927.

Under date of March 13, 1928, the Georgia Commission made and promulgated an order directing the establishment on and after May 1, 1928, of a revised scale of rates for intrastate application within the state of Georgia. A copy of said order is embodied in the carriers' supplemental petition of April 12, 1928, being marked exhibit A thereof.

The Georgia intrastate rates then established and now published in Agent Glenn's Georgia local and joint mileage tariff, I. C. C. A-529, are those about which the carriers are now complaining (Rec., 1712).

I am familiar with the contents of the petition filed April 12, 1928 on behalf of the carriers and matters of fact therein stated are true with one slight exception. On page 6, in paragraph 4, it is stated that the petitioners state that rates arrived at upon basis of the distance scales prescribed and ordered in the said orders of this Commission dated January 21, 1927, and March 5, 1928, respectively, have been made effective by all carriers respondents herein for interstate [fol. 459] application over their respective lines, and so forth.

At the time this petition was filed on April 12, 1928, the Commission's order dated March 5, 1928 has not been complied with. It covered the rates to and from the Florida peninsula, which as I have just stated, were published effective August 2, 1928.

Mr. Gwathmey: If the Examiner please, I will ask at this time that the petition dated April 12, 1928, be considered as a part of the record in the case.

Mr. Watkins: We object to that if it is to be considered as evidence. Of course, it is pleadings, and the pleadings are a part of the record, but as evidence we object to its consideration (Rec., 1713).

Exam. Waters: What do you offer it for?

Mr. Gwathmey: I have had the witness verify the accuracy of the facts set forth in that petition, and I offer it for the purpose of establishing those facts.

Exam. Waters: It may be received.

Mr. Burchmore: May we understand that being so received, the order of the Georgia Public Service Commission of March 13, 1928, set forth therein as exhibit A, is considered in evidence?

Exam. Waters: The whole thing has gone in.

[fol. 460] Mr. Gwathmey: The petition as a whole is in evidence. The purpose of offering it is largely one of convenience and to avoid going over a historical narrative of these different occurrences. A further purpose is to put in the record in this manner a true copy of the order of the Georgia Commission about which we are here complaining. It is in convenient form, and I think will serve a very good purpose in that way.

My exhibit No. 98-B is a statement showing single and joint line rates on sand, gravel, chert, and so forth (Rec., 1714), prescribed by the Georgia Public Service Commission in docket 15416 and 15997, becoming effective intrastate in Georgia April 1, 1925; those prescribed by the Interstate Commerce Commission in docket 17517; and those prescribed by the Georgia Public Service Commission, March 13, 1928, file 16384, to become effective intrastate in Georgia May 1, 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 98-B, Witness Doss.")

I now offer as my exhibit No. 99-B, a statement showing Trunk Line scales prescribed by the Interstate Commerce Commission in docket No. 17517, and by the Georgia Public Service Commission in its order of March 13, 1928, on sand, gravel, crushed stone, slag, and other roadway building materials.

By "Trunk Line" I mean the scale of rates applicable be-
[fol. 461] tween points and involving hauls only over the so called standard or trunk lines. The single and joint line scales in the two orders mentioned are shown in parralel columns, with a third column headed "Differences" under which are shown the differences between the two scales.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 99-B, Witness Doss.") (Rec., 1715.)

It will be observed that as to the single line scale prescribed by the Georgia Public Service Commission, it is in some cases the same as the Docket 17517 scales, while for other distances, principally under 200 miles, the Georgia Public Service Commission scale is lower by amounts of five cents and 10 cents per ton than the docket 17517 scales, while for distances 200 miles and over there are some instances where the Georgia Public Service Commission scale is in amounts five and 10 cents per ton higher than the docket 17517 scale.

As to the joint line scales, it will be noted that the Georgia Public Service Commission scale for all distances 220 miles and under is lower by amounts ranging from five cents to 25 cents per ton than the joint line scale prescribed in docket 17517.

For distances over 320 miles there are some instances where the scales are the same, and others where the Georgia Commission's scale is five or 10 cents lower than the Interstate Commission's scale, and for 400 miles and over. 360 miles the Georgia Public Service Commission [fol. 462] scale is five cents higher than the interstate scale (Rec., 1716).

Exhibit 99-B relates exclusively to Trunk Lines. Under the Interstate Commerce Commission's order in docket 17517, the so-called short or weak lines were permitted to add an arbitrary of 25 cents per ton, as we understand the order, and as it has been applied. These short or weak lines determined for themselves whether or not they would add it. In some cases they added it, in other cases they did not add anything, and in others they added some split between 25 cents and nothing. Under the Georgia Commission's order I understand the short lines are permitted to charge 10 cents per ton higher than the Trunk Lines.

The basis permitted by the I. C. C. for the short or weak lines is higher than that permitted by the Georgia Commission for both single and joint line hauls over short line railroads (Rec., 1717). In the case of joint hauls between Trunk Lines and short lines, the Georgia Commissions' basis is lower in all cases.

My Exhibit, No. 100-B, 48 Sheets, shows the rates on these commodities to 46 Georgia points widely scattered throughout the State and fairly represents the whole situation.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 100-B, Witness Doss.")

[fol. 463] To each destination are shown the rates from representative interstate shipping points, and thereunder rates from representative Georgia shipping points for comparable distances.

The statements show the distances, the present rates, the rates yielded by the docket 17517 scales and the amounts by which the interstate rates exceed the intrastate rates under the docket 17517 rates and under the present Georgia intrastate rates.

In illustration, the second sheet of the exhibit shows (Rec., 1718) rates to Millen, Ga. In the first group, the rates from Beverly, Hellams and Pacolet, S. C., are contrasted with rates from Lithonia, Elberton and Junction City, Ga. The present rates are from the three South Carolina origins 145 cents, and from the three Georgia origins 130 cents. The 145 cent rate from the South Carolina origins is on basis of the docket 17517 scales.

If the rates from the Georgia origins were made on the interstate basis, they would be, from Lithonia, 140 cents; from Elberton, 160 cents, and from Junction City, 135 cents.

The 160 cent rate from Elberton is on basis of adding the short or weak line arbitrary of 25 cents per ton.

If the rate be made on basis of the Trunk Line mileage, it would be higher than 160 cents.

[fol. 464] If the short lines participating in this haul forego their 25 cents per ton arbitrary the rate from Elberton would be 135 cents instead of 160 cents.

In the columns headed "Spread under Docket 17517 rates" and "Spread under the Georgia Commission's

order," it will be observed that at the present the rates from the Georgia origins are 15 cents per ton lower than from the South Carolina origins, but if the Georgia rates be made on the interstate basis the spread will be reduced to five cents from Lithonia and to 10 cents from Junction City (Rec., 1719).

From Elberton, if the short or weak line arbitrary of 25 cents per ton is added the rate instead of being 15 cents per ton less than the South Carolina points as of today, will become 10 cents per ton higher than from the South Carolina points, but if the short or weak lines forego their arbitrary the rate from Elberton will become 135 cents, which reduces the present spead of 15 cents to 10 cents.

In the next group are compared the rates from Bennettsville, Hoovers, Slawco, and Dillon, S. C., with the rates from Fort Gaines, Georgetown and Helmer, Ga.

At present, Fort Gaines and Georgetown have a 10 cent and Helmer a 20 cent per ton advantage over the South Carolina origins. If the rates from the Georgia origins be made on the interstate basis, Fort Gaines and Georgetown will then have the same rates as the South Carolina origins [fol. 465] while the 20 cent spread enjoyed by Helmer will be reduced to 10 cents.

Taking Albany, Ga., page 13, it will be noted that today Chehaw, Ala., distance of 145 miles, has a rate five cents per ton higher than Norris, a distance of 179 miles. In both cases joint hauls are involved, and if the rate from Norris be made on basis observed from Chehaw it will, instead of being five cents lower, be 10 cents higher. Chehaw, therefore, is suffering a disadvantage of 15 cents (Rec., 1720) per ton.

To Bainbridge, Ga., page 39, the present rate from Birmingham, Ala., distance of 272 miles, is 170 cents, while from Lithonia, Ga., distance of 276 miles, the present rate is 180 cents, or a difference in favor of Lithonia of 10 cents, whereas the distances being substantially the same the rates if made upon the interstate basis will be identical.

To Waycross, Ga., page 45, Montgomery, Ala., a distance of 261 miles, has a rate of 165 cents, while Norris, Ga., a distance of 245 miles, has a rate of 150 cents or an advantage of 15 cents per ton.

If the rate from Norris be made on the same scale as Montgomery, it will be 160 cents, or a difference of only five cents per ton.

[fol. 466] My Exhibit No. 101-B is a map issued by the State Highway Department of Georgia showing the system of State Roads.

(The same was thereupon received in evidence, marked "Carrier's Exhibit No. 101-B, Witness Doss".) (Rec., 1721.)

On this map I have circuled in red crayon a number of the points which are shown as destinations in my exhibit 100-B. I am merely filing this map for the purpose of showing that the destinations selected are well scattered over the state, and should be fairly representative of the situation.

My exhibit 102-B is a statement showing distances and rates on crushed stone, carload, to representative Georgia points, from Columbia, S. C., Holton, Ga., Lithonia, Ga., and Clairmont, Ga.

(The same was thereupon received in evideence, marked "Carriers' Exhibit No. 102-B, Witness Doss.")

From the Georgia origins, the rates yielded by the interstate scales prescribed in docket 17517 are also shown.

The destination on the exhibit shows Swansboro. That should be Swainsboro.

The figures on this exhibit include 10 cents per ton where the haul intrastate in Georgia is over short or weak lines, in connection with the rates from the Georgia origins, while the rates from Columbia and those shown opposite to 17517 scale from the Georgia origins include the short or weak line arbitrary of 25 cents per ton (Rec., 1722).

The Atlantic Coast Line handles a very large tonnage of sand, gravel, crushed stone and related articles.

In the first hearing of I. C. C. docket 17517 I testified to this effect, and called attention to the fact that for the year 1924 the Coast Line handled more than 3,750,000 tons, which [fol. 467] represented 18.1 per cent of the total tonnage handled, and for the ten months ending October 1, 1925,

the Coast Line handled 4,452,519 tons which represented 22 per cent of the total tonnage handled during that period.

I find that for the first eight months of 1928, the Coast Line handled 2,572,417 tons of these commodities, which represents 18.6 per cent of the total tonnage.

During the same period of 1927 the Coast Line handled 3,517,513 tons, representing 22.7 per cent of the total tonnage handled.

Our revenue on the tonnage handled for the first eight months of 1928 approximated $2,100,000 and for the first eight months of 1927 $3,220,000. Our revenue on these commodities represented approximately 6.5 per cent of our total freight revenues (Rec., 1723).

Yes, the figures I have given all relate to the entire tonnage and revenue of the Atlantic Coast Line on these commodities and include intrastate and interstate in Georgia, Florida, and Carolinas.

By Mr. Gwathmey:

Q. Mr. Doss, is uniformity in the mileage scales applicable on these commodities between points in the socalled Southern territory, exclusive of the Florida peninsula (Rec., 1724), and intrastate between points in the states other than Florida served by the Atlantic Coast Line, a necessary and desirable thing, in your opinion?

Mr. Burchmore: I object to that on the ground that it is not a proper question for this witness, or a question on which this witness is qualified to express a competent opinion. I concede that he is thoroughly informed as to traffic matters, and thoroughly conversant with rates and [fol. 468] traffic matters of the Atlantic Coast Line and corresponding carriers throughout the Southern region, when I make that objection.

My objection is intended to go to the substance of that question which is, "Is uniformity in mileage scales necessary and desirable?"

Exam. Waters: You may give your opinion on it for what it is worth.

Mr. Burchmore: I will note an exception.

The Witness: In my opinion, the transportation and other conditions on the lines of the Atlantic Coast Line other than in the peninsula of Florida are such that vary-

ing levels of rates on these commodities are not justified and cannot be operated without causing discrimination and trouble.

From one end of our railroad to the other end, we find on these commodities that the intrastate producers are competing with the interstate producers. For example, North Carolina stone moves into Virginia in competition with Virginia producers; Virginia stone and gravel moves into North Carolina in competition with North Carolina producers; North Carolina stone, gravel and sand moves into South Carolina in competition with South Carolina producers; the South Carolina products compete with similar products from North Carolina and Georgia, and to some extent with Alabama, Tennessee and Virginia; the Georgia producers compete with Alabama, Tennessee, South Carolina, North Carolina and Florida, and so on.

There cannot very well be a departure from the uniform basis either interstate or intrastate, from and to any of the points in this territory without causing trouble. The situation is correctly stated in the Interstate Commerce [fol. 469] Commission's report in docket 17517, 122 Interstate Commerce Reports, at page 148, in the following language:

"While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic."

The arrangement we have for collecting the data dealings specifically with the matter of revenue that is involved in connection with the application of the Georgia prescribed scale, contemplated its preparation on a forwarded basis, that is, that the originating line would prepare the information. Since there is no production of crushed stone, slag or chert, and only a small production of gravel and slag at points on the A. C. L. I will not deal with that situation. The A. C. L. is a large and im-

portant delivering line but not an originating line in Georgia (Rec., 1727).

By Exam. Waters:

The docket 17517 scales have been made applicable intrastate in North Carolina and intrastate in Alabama. They have been made effective interstate throughout the territory on and east of the Louisville & Nashville Railroad all the way to the Virginia Cities with some slight exceptions. What I have said does not refer to short or weak lines, because as I have previously said, in some cases [fol. 470] they took the arbitrary, and in other cases they did not.

I understand that in Tennessee and in Kentucky the rates have been made applicable with the exception that in the socalled Mississippi Valley part of Tennessee and Kentucky, probably that has not been done.

I understand that the tariffs carrying the interstate rates in the Valley, in the Mississippi Valley are now being compiled, and within a very short while the docket 17517 scales will be made applicable in that territory.

I am not fully informed about the intrastate situations in Mississippi and Louisiana (Rec., 1729).

The scale has been voluntarily extended by the carriers beyond the scope of the general orders so as to cover all interstate business in the Southeast.

(Witness excused.)

J. H. WHIGGAM was thereupon called as a witness and, being *being* first duly sworn, testified as follows:

Direct examination.

By Mr. Cotterill:

I am employed by the Roquemore Gravel Company of Montgomery, Alabama, one of the joint complainants in this case, which has acquired substantial interests in the Mobile Sand and Gravel Company since the last hearing in this case. Except for differences in the scale of operations, the situations of the two companies respecting the

matters here involved are sufficiently alike, so that my testimony is equally applicable to both (Rec., 1730).

Both these companies are located on the Montgomery District on the L. & N., the Western Alabama, The Central of Georgia, and the M. & O., and the capital of these [fol. 471] two companies is $2,000,000. Until lately the actual production has been approximately 3,000,000 tons annually. There have been recent additions to the companies' facilities looking to an enlargement of their operations to a point of approximately 5,000,000 tons per year, which means an increase on an assumed loading of 50 tons per car, from 60,000 cars to 100,000 cars, and the existing production runs in the neighborhood of 60,000 to 65,000 carloads (Rec., 1731).

The companies' shipments are into Georgia, Florida, Alabama and parts of Tennessee, Mississippi and South Carolina. The distribution of tonnage between those destinations varies. On of the contributing factors that cause such variations is the varying amount of bond issues for highway work at different times. The division of use of gravel and sand produced by my companies is about fifty per cent between highway and other types of building (Rec,. 1732).

And seasonal conditions also is a factor in the variation of the demand. In Florida it fluctuates considerably. The state of the money market is another factor, as is also the state of general business (Rec., 1733).

The demand in Alabama for our commodities does have an effect upon our sales in markets outside of Alabama (Rec., 1734). I think fifty per cent is a fair approximation of the normal consumption of our products in Alabama, allowing for the variations in demand that I have mentioned as occurring from time to time and I think 25 per cent or 50 per cent of the remaining half might represent the normal distribution into Georgia, while the remainder will go to Florida and portions of Mississippi, [fol. 472] Tennessee and South Carolina (Rec., 1735).

The maintenance of full operating capacity necessarily affects operating and distribution expense. Georgia affords our companies a large market for its products after we meet the demand in Alabama, and is of increasing importance so that we maintain separate auxiliary organizations within Georgia, as for example, sales offices in At-

lanta and Albany (Rec., 1736), which keep in close touch with the work in the entire state of Georgia at a cost of about $20,000 a year. We receive daily reports and much information as to possible sales. There are large quantities, of stone, sand and some gravel in Georgia that compete with our sand and gravel. The principal shipping points for stone are Tate, Lithonia, Stockbridge and Ladds, and for sand and gravel Macon, Columbus, Sappho, Williams, Howard, Junction City, Rollo, Gailliard, Lumber City, and Douglas (Rec., 1737). The producing points are scattered all over the state. The rock producing regions are more localized to the north Georgia producing points I named (Rec., 1738).

About 30% or 35 per cent of a given expenditure for a highway is represented by the delivered cost of the material.

Q. Now if the delivered cost of the aggregate be taken as ordinarily amounting to something like 30 to 35 per cent of the complete construction cost, what in very general terms is the percentage which the transportation charges bear to that 35 per cent?

Mr. Burchmore: I object to that question on the ground that this witness is certainly not competent to deal with that question in any such large general fashion as the question implies, the transportation charges—the transportation cost depending, we may assume, for the purposes of this objection, on where this material is transported from and what rate it pays.

[fol. 473] Mr. Cotterill: That is all assumed, and I think the witness understands those assumptions.

Mr. Burchmore: The question calls for his conclusion (Rec., 1741) as to what the average is throughout the territory.

Mr. Cotterill: Well, I did not ask him averages, we are dealing here in very general terms, and I think he takes these assumptions into account.

Exam. Waters: Read the question, please.

(Question, as above recorded, was repeated by the reporter.)

Exam. Waters: I think he can answer, taking into consideration the inherent weakness which such a question must have.

The Witness: The transportation cost is usually two to four times the cost of the material at the plant.

A difference of a few cents in transportation charges frequently affects to a substantial degree the decision of attempting to participate in a given construction enterprise (Rec., 1742). We watch variations in transportation charges pretty closely (Rec., 1743) and also determine in advance whether we can compete on a given project (Rec., 1744).

Q. When you do lose jobs upon which you bid, do you or do you not lose them sometimes because of freight rate differences?

Mr. Burchmore: I object to that on the ground that it is leading.

Exam. Waters: Read the question, please.

(Question, as above recorded, was repeated by the reporter.) (Rec. 1745.)

[fol. 474] Exam. Waters: I don't see any objection to that question.

The Witness: We do lose them sometimes on account of freight rate differences. At other times it is from other causes.

Q. Is the effect of freight rate differences perceptible to you only in instances of loss of jobs upon which you bid, or is the effect perceptible additionally by reason of your inability to compete?

Mr. Burchmore: I object to that question on the ground that it is a leading question which ought not to be addressed to the witness, and that the answer to the question is wholly immaterial and throws no light on any proper issue in this case.

Mr. Cotterill: I will respectfully address myself to counsel's objection. I do not want to get into too much discussion——

Exam. Waters: Before you discuss it, I don't just understand what you are driving at by that question.

Mr. Cotterill: I will explain it, and after I explain it, I think the form of the question will then become more evident. Lawyers before the Commission are in some dis-

agreement, I think, as to whether the proof of resulting damage essential to support an undue prejudice case shall consist only of that proof which goes to loss—loss transactions (Rec., 1746); lost bids, lost sales, or whether or not there may be maintained under section 3 of the act, and the corresponding provision of section 13, a complaint of undue prejudice where the testimony establishes not lost sales in the sense that a particular effort was made, but the inability to compete owing to the differences in charges. Now, the discussion in which I have been engag- [fol. 475] ing with counsel, and which the very shrewd and capable counsel from Chicago fully appreciates the significance of, bears upon that question. It is necessary to express the question in the alternative, because I am seeking by that question to have the witness say, if it be the fact, that not only is the effect of a maladjustment, assuming it to be a maladjustment, lost opportunities of sales when they bid, but there is an equal and perhaps more persistent effect resulting from the fact that he cannot bid at all. Now, it is in that alternative form that I am asking the question, and for those reasons.

Mr. Burchmore: And will you agree that even so phrased to the witness, the witness would not know that there was——

Mr. Cotterill: No, sir, he has given me every fact that my question is based upon.

Exam. Waters: Do you mean as part of your question that this witness very often does not make bids on account of (Rec., 1747) the existing situation?

Mr. Cotterill: I would not say very often, but I would say that the proof of damage resulting from a maladjustment need not be limited to lost sales, but extends as well to proof that it was concluded not to try to make a sale by reason of the differences in the freight transportation charges. Now, the question whether that is or is not sufficient is a question still pending before the Commission, and I think in one of the courts.

Exam. Waters: May I ask what question is being put to the witness?

(Question, as above recorded, was repeated by the [fol. 476] reporter.)

Mr. Burchmore: I object to the question on the grounds stated.

Exam. Waters: He may answer.

Mr. Burchmore: I take an exception.

The Witness: It is evident in both instances.

Mr. Burchmore: May I ask that the witness state in his own language what is evident in both instances?

The Witness: That in lots of cases we do not bid, as well as in some cases where we bid and lose. In other words, there are instances where we do not bid at all, due to differences in freight rates (Rec., 1748).

There are portions of Georgia territory where we do not compete at all, as for example north Georgia, north of Atlanta, because it was useless due to the differences in rate between the stone people in North Georgia and ourselves, where their hauls are shorter than ours. Practically in all instances we pay into north Georgia a joint line differential, whereas our competitors in North Georgia do not (Rec., 1749), and shipping to central parts of Georgia we have to observe the freight differences to get the business. We have had recent instances where we failed to bid because of freight rate differences in Georgia (Rec. 1750). That condition has existed for some time, I can't recall exactly how long. Generally speaking, shipping from Montgomery into Georgia involves greater distances than from within Georgia than from competing producing points within Georgia. In other words, we start with a higher freight rate than our competitors in Georgia.

[fol. 477] Q. Then to that extent has that condition always been one to be dealt with by your company?

A. It has.

Mr. Burchmore: Just a moment, he answered before I could interpose an objection. That is a leading question and highly objectionable, and I ask the Examiner, the witness having answered before objection could be made, to rule that leading questions shall be dispensed with.

Exam. Waters: I think I have indicated the best I can that they should not be asked. Of course, it is hard sometimes to keep out some things that appear leading, but I do (Rec. 1751) hope that counsel will be very careful.

Mr. Cotterill: I am constantly trying to do so, your Honor.

Mr. Burchmore: Now that question was objectionable as being leading, as implying a material fact in this case which the witness has not touched upon.

Exam. Waters: What was that question?

(Question, as above recorded, was repeated by the reporter.)

Exam. Waters: What is the matter with that?

Mr. Burchmore: He implies that they have always had higher rates from Montgomery into Georgia than within Georgia, which is not the fact.

Exam. Waters: I thought he meant they had longer distances.

Mr. Burchmore: But his previous question related to [fol. 478] rate and not to distance.

Exam. Waters: I asked him how long this rate difference had existed.

Mr. Burchmore: Yes, sir, and he was there testifying about a difference in mileage, but he is now asked about a difference in rate.

Exam. Waters: I think he meant to say that he had a natural handicap by reason of the fact that he has a longer distance, even if the rates were on an equal level (Rec., 1752).

Mr. Burchmore: But the leading questio- implied that under that natural handicap he had a difference in rates, which I think he will not attempt to urge.

Mr. Cotterill: I do attempt to urge it. This record deals with every phase of the transportation charges from Alabama into Georgia prior to the interstate revision, and I am not going to undertake at any time in this examination to lay a new foundation for testimony when I think the record already contains it. The Examiner's assumption was correct that my question was directed to the fact that under normal conditions the hauls from Alabama are longer than from Georgia, and counsel properly inferred that in addition to the establishment of that as a physical fact I intended in my question, and I intend later on in another connection, to allude to that circumstance as bearing upon the problem we are here dealing with in its effect on freight rates (Rec., 1753).

There has always been a difference in the distance against us, as well as against the differences in rates, which has been intensified by reason of the interstate revision into [fol. 479] that portion of Georgia. We are able to ship the further distance through Georgia into South Carolina in competition with Georgia producers while we are unable to a substantial extent ship into north Georgia in competition with Georgia producers because there are portions of South Carolina near Georgia where we have single line hauls, and are able to get in there with small differences. Such hauls are interstate and the interstate rates from Georgia to South Carolina are constructed in the same manner as interstate rates from Alabama into South Carolina (Rec. 1754).

Q. In testing the effect of the rate differences as between your interstate charges into Georgia and the intrastate charges *charges* within Georgia, would it be of any significance that your tonnage shipments into Georgia at a given time (Rec. 1754) increased or decreased in the aggregate?

Mr. Burchmore: Well, I don't understand that question as I hear it. It seems to me to call for the conclusion of the witness that the witness is hardly competent to give, which is a conclusion that the Commission would have to reach upon all of the facts applied to the situation, and not upon any limited facts implied in the question ifself.

Exam. Waters: It seems to me that you might ask him whether at a certain time his shipments decreased or increased. He could give his opinion as to the case of it, what he thinks about it, but the ultimate fact has to be determined by the Commission.

Mr. Cotterill: By way of explanation of the question, and I think I framed it properly, I wanted by that question and answer to establish, if I could, that in the case of this [fol. 480] traffic there may be a maladjustment of rates which the tonnage shipments from Alabama to Georgia may in fact have increased, notwithstanding a newly created maladjustment, and that the reverse can be true, that the removal of a rate maladjustment would not of its own accord necessarily increase the aggregate tonnage. Now, that was the import of the question, and that is why I asked him whether or not in testing the effect of a maladjustment

of rates in his business would it be significant that his tonnage increased (Rec. 1755) or decreased at a given time.

Exam. Waters: He may answer.

The Witness: It would not be significant, because other conditions vary the tonnage regardless of freight at different times. We endeavor to market our product at all other places in Georgia than those excepted because of present conditions. We absorb to some extent freight disadvantages in conducting our business into those places in Georgia where we do ship. That absorption varies at different times due to other facts (Rec. 1756).

Our competitors in Georgia are actively seeking the same jobs that we do. Most of our shipments are to Atlanta and south of Atlanta, the entire southern portion of the state. Practically all destinations in Georgia are prospective points of consumption due to road work. In the past Atlanta has been the large consuming point and there have been some points south of Atlanta. That is truer of years gone by than recently or at the present time (Rec. 1757). Conditions have appeared to change lately. There are large quantities of shipments being made to blind sidings, [fol. 481] but it cannot be told beforehand where shipments will be made (Rec. 1758).

Cross examination.

By Mr. Burchmore:

The plant of the Roquemore Gravel Company is on one side of town and the Alabama Sand and Gravel Company is on the opposite side of town. The two companies produce and ship sand and gravel at this time. It is washed and screened gravel. We don't produce clay gravel (Rec., 1759). We produce sand (Rec., 1760).

Mr. J. D. Roquemore is still president and general manager of the Roquemore Gravel Company (Rec. 1761).

Exam. Waters: I am saying that for the benefit of all as much as Mr. Burchmore. The case is reopened, and this proceeding is a part of the old proceedings. That is my position.

Mr. Burchmore: I think we all so understood, Mr. Examiner. There is no criticism of your ruling at all. There

is an exception taken to it, just as though it had been made by the power of the 11 Commissioners (1764).

The current prices obtained by Montgomery producers for washed gravel are 15 cents to 90 cents per ton. We do not produce clay gravel and I do not know the current prices obtained for that product produced in the Montgomery district because of its fluctuations and the small quantities now being sold (Rec., 1765). The Roquemore Company does not produce both washed gravel and sand in the same proportions. We usually produce what the market will consume (Rec., 1756). At the present time with our companies the production of gravel is not a by-product of the production of sand.

Q. Would you say that with your companies the production of sand is a byproduct of the production of gravel?

A. That is something that varies at different times, it is controlled by the consumption.

In some instances, not often, our washed gravel produced at Montgomery competes with clay gravel. We compete with stone and other coarse aggregates. There is a compe-[fol. 482] tition of one type of road with another, that is to say, concrete with brick, concrete with limerock and concrete with penetrations. We have always sold gravel at LaGrange (Rec., 1767). There are other points that are producing material on which the freight rates are considerably lower than from Montgomery to LaGrange, Georgia. One of them is Columbus, Georgia, where there is a producer, but I don't know whether he has sold any of his products at LaGrange, Georgia. In our shipment to LaGrange they could move over two roads. Ordinarily they are made over the Atlanta & West Point and Western Alabama, the trunk line (Rec., 1768). I don't recall just now whether we have ever shipped over any other road from Montgomery to LaGrange or not. There are others who have a lower rate to LaGrange than we do.

I am not conversant with rates applicable within the state of South Carolina on these materials nor with the basis of intrastate rates in South Carolina on these materials. Of sand, washed gravel, clay gravel, crushed stone, slag and chert, some of them are produced in quantity in South Carolina (Rec., 1769).

The freight charges are ordinarily from two to four times the value of sand in this territory.

Q. Isn't it sometimes as much as 20 times the value of the sand?

A. I think at the time I answered that question two to four times was referring to gravel as well as sand (Rec., 1771). It depends on the length of haul and varies considerably at different points. I have never had any experience with the cost of crushed stone. I do not know whether these materials are customarily sold at prices substantially above or only slightly above or under the cost [fol. 483] of their production.

(Witness Excused.) (Rec., 1772.)

H. T. Youmans was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am in the clay gravel business at Ellenton, S. C., only a half interest in the Ellenton Gravel Company, which I am superintendent and general manager. Ellenton is on the Charleston and Western Carolina R. R., 22 miles east of Augusta on the Port Royal division. Our output is clay gravel only (Rec., 1773).

We have been operating more than four years, 20 years in all, but four years in Ellenton. Before going to Ellenton we operated at Steele Creek, S. C., Beach Island, S. C., and Hamburg, S. C. Steele Creek and Beach Island are also located on the Charleston and Western Carolina, but Hamburg is on the Southern out of Augusta. Our total tonnage runs from 100,000 to 200,000 tons and from 2,000 to 5,000 cars per year. Our largest shipments have been in Georgia the past 15 years, shipping a number of cars to the Coastal section, Savannah, and Waycross and some as far as Quitman. For the past few years, our company, either at Ellenton or one of the nearby points, has been shipping into Georgia (Rec., 1774).

I would like to state that there have been one or two changes made in the rates that curtailed our business in Georgia quite a little, but the changes made effective May 1st have put us out of Georgia. We had orders at that time, and they wired us to cancel with 24 hours, and we have been out of the business since that time in Georgia. We have not had any further orders in Georgia at all. That was May [fol. 484] 1, 1928. Since that date our company has found itself unable to do business in Georgia.

I would just like to call attention to page 2 of this exhibit 100-B put in by Mr. Doss.

The distance in mileage from Ellenton, S. C., and from Norris, Ga., which is a competitive clay gravel shipper in the state of Georgia—my mileage is 78 miles from Ellenton, S. C., to Pillen, Ga., and from Norris, it is 76 miles, a difference of two miles (Rec., 1775).

My rate is $1.05 per ton, and the rate from Norris, Ga., is only 90 cents, a difference of 15 cents per ton, and a difference of only two miles.

Referring to page 4 of the same exhibit, from Ellenton, S. C., to Midville, Ga., the distance is 75 miles, and the rate is $1.15 per ton, and from Norris, Ga., to Midville is 67 miles, making a difference of only eight miles, and the rate is 80 cents per ton, a difference of 35 cents per ton with a difference of only eight miles. Our haul is a joint haul. I think most of these points are joint line hauls, but I think they use the single line rate over the joint line haul in Georgia since May.

I refer to page 12 of the same exhibit. From Ellenton to Waynesboro, Ga., is 57 miles; from Norris, Ga., to Waynesboro, is 55 miles—a difference of two miles. The rate from Ellenton, S. C., is 95 cents, and from Norris, Ga., 80 cents, a difference of 15 cents per ton, and only two miles difference in distance.

Page 15, to Vidalia, Ga., from Ellenton to Vidalia is 126 miles, and from Norris, Ga., to Vidalia, 111 miles and (Rec., 1776) the rate from Ellenton is $1.35, and from Norris, [fol. 485] $1.10, making a difference of 25 cents per ton.

Then refer to page 46, Savannah, Ga.—from Ellenton, S. C., to Savannah, Ga., is 103 miles. From Norris, Ga., to Savannah it is 152 miles, and my rate from Ellenton, S. C., is $1.25 per ton, and from Norris, Ga., it is $1.20 per ton,

five cents difference per ton, with 49 miles difference in mileage. I have the shortest mileage by 49 miles, and the highest freight rate by five cents a ton, and these rates and differences exist practically all over the State of Georgia. I have been shipping to Georgia for nearly 20 years, but I am totally out of the state of Georgia now, and consequently my company has been suffering a loss, and we haven't done anything since May 1st.

Our clay gravel sells for about 35 cents a ton f. o. b. the plant, $14 a car, and at that price there is little opportunity to absorb differences in freight charges to get business (Rec., 1777).

Now, with the operations of the plant and overhead expense we have, we used to get 50 or 60 cents a cubic yard, and later 40 cents and 50 cents a ton, but competition has brought the price down to 35 cents a ton, and we have no way of making further reductions f. o. b. the plant. The difference in freight rates prohibits us from selling in Georgia at all because they can buy it and ship it for less than I can from North Carolina for a shorter distance. The reasons assigned for the cancellation of those contracts was the change in freight rate. I had one prospective order at Waycross, Georgia, at the time, bid on that, but the change came along just before that, May 1, 1928 (Rec., 1778).

[fol. 486] If the freight rates from South Carolina into Georgia were placed on the same mileage basis with the freight rates intrastate Georgia, we could do business in the Coastal section of Georgia where we usually have done business, Savannah, Brunswick, Waycross, and that section. Yes, I have shipped to Vidalia, Waynesboro, Savannah and Millen; lost an order at Waynesboro this year, and with the mileage I had I should have gotten it, but the competitors could get in there over more than one line cheaper. There are only one or two of us in the clay gravel business, operating plants on the main line of the Charleston and Western Carolina in South Carolina, operating at the present time, and some other sand operations (Rec., 1779).

Our plant is just over the river out of Georgia, 22 miles east of Augusta and 18 miles by rail from the Georgia State Line, but across the river is only about 3 miles.

There is nothing further that I know of, except that I think if the rates were all on an equal basis in South Carolina, and Georgia, and the different states, 100 miles would be 100 miles for any shipper, and the shipper having the nearest mileage, it would be fair for them to get the business, but as it is, some of our competitors can ship at greater mileage than we can at a less freight rate.

Some shippers ship over three or four of these little short lines, where I have a one line haul. The Charleston and Western Carolina is owned by the Atlantic Coast Line. They can ship over three or four railroads in Georgia for less money than I can over a one line haul (Rec., 1780).

[fol. 487] Cross examination.

By Mr. Webster:

I can't say positively why I lost the contract at Waynesboro. Mr. Graves is here and he would know, I imagine.

By Mr. Graves:

The reason neither you nor I got it is that the buyer got it from local locations and hauled it by trucks at 17 cents a yard instead of a dollar and something in freight (Rec., 1781).

I know of no difference between the Charleston and Western Carolina and the A. C. L., it has always been considered a one line haul, and I am now shipping over A. C. L. and C. N. W. C. to Barnwell, S. C. (Rec., 1782).

Material from our Ellenton plant to Millen, Georgia, 78 miles, would be moved over the C. N. W. C. to Augusta, and the Central of Georgia out of Augusta. There may be other routes; there are two or three other roads over there but I don't know which ones they are (Rec., 1783). I don't know that my competitor at Norris, Georgia, would ship over any shipping to Millen.

There have been some two or three jobs up in that particular section in the last 12 months that I bid on, and got the freight rates quoted by the railroads, and got the difference in rates between me and the Georgia competitor, and I found the difference was so great I couldn't get in there. I never have shipped anything to Millen because

when I investigated the rates I found the difference was so great that I could not even get in there. I haven't made any shipments to Midville, Georgia. I know what the railroads quoted me as the rate to Midville. It was $1.15 (Rec., 1785).

[fol. 488] I haven't looked it up and don't know what railroads would carry my shipments from Ellenton to Midville, if I shipped any. If you will give me a map I can tell you. I don't know what railroads I would ship over if I shipped to Midville, Ga. (Record, 1786). The initial carrier to whom I would give it would be the Charleston and Western Carolina, but I don't know what road would haul it to Midville.

Yes, I have shipped to Savannah, Georgia, in the last two or three years and over the Charleston and Western Carolina and Atlantic Coast Line, the latter as the delivering carrier. I haven't shipped over any other route in the last twelve months. I don't know by what route the distance of 103 miles from Ellenton to Savannah is figured, nor whether it is over the C. N. W. C. or A. C. L. or some other route (Rec., 1787). They have a junction at Allendale, S. C., with the Southern and one at Fairfax, S. C., with the Seaboard, and one at Yemassee, S. C., with the A. C. L. Practically all of these freight rates have applied C. N. W. C. and A. C. L. as a one line haul into Savannah and beyond. I have shipped some over the Seaboard and some over the Southern. On May 1, 1928, our rates were changed from our quarry to points in Georgia; to Savannah proper for instance, the rate was $1.17 and they raised it to $1.25 and that took effect about May 1, 1928 (Rec., 1788).

I don't know about rate changes in the state of Georgia on May 1, 1928; the mileages were different. I got the Georgia and Florida Railroad to quote me the Georgia rates from a competitive shipping point and they showed a considerable difference to a number of points (Rec., 1789).

[fol. 489] The only thing that I can tell about was several particular rates, for instance the Savannah rate was raised from $1.17 to $1.25. The Brunswick rate was lowered from $1.53 to $1.45, and two or three other similar changes, from five cents to 10 cents. I just happened to remember them.

I don't remember the exact date of the change in the Brunswick rate, but I do know that the change in the Savannah rate was May 1, 1928, when I was raised from $1.17 to $1.25 (Rec., 1790).

Exam. Waters: I want some explanation of the increase in the interstate rate. Could that have been due to some provision in the Georgia order? There is some provision in there about increased interstate rate. Mr. Doss, you can answer that perhaps?

Mr. Doss: I don't know, let me see about that. Mr. Examiner, there have been no changes in the Ellenton rates since they were established under docket 17517, effective in 1927.

Exam. Waters: What month?

Mr. Doss: October 1, 1927, as I recall. There is a provision in the Georgia Commission's order about the interstate rates not being lower than the Georgia rates over the same route, but of course the Georgia rates being lower than the interstate rates, no change was made in the interstate rates by reason of that provision in the Georgia Commission's order.

Exam. Waters: All right, Mr. Burchmore.

Mr. Doss: The thing Mr. Youmans is trying to explain is that his differences were changes May 1st.

The Witness: I don't know what brought about the [fol. 490] change altogether, but I do know that I have shipped to Savannah, the country there, 100 cars since then, and I paid $1.25 on it where I had been paying for several years $1.17. I know it was raised from $1.17, but I don't know just how (Rec., 1791).

When the Charleston and West-rn Carolina rates were revised on sand and gravel and crushed stone, it practically put us out of business. I have had all my contracts cancelled in Georgia more than once (Rec., 1792).

(Witness excused.)

Richard Simmons was thereup called as a witness and being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I reside at Columbia, S. C., and am sales manager for the Weston and Brooker Company, engaged in producing and

selling crushed stone, crushed granite and riprap stone. We have been operating about 15 years and our annual output is about 300,000 tons. We have moved certain tonnage into Georgia, practically all through the Coastal section of the state (Rec., 1793).

My testimony will be substantially the same as Mr. Youmans'. However, what we really have in mind as future business, and not tonnage that has been missed in the past, and if the intrastate rates of Georgia were put on the same basis that our rates are from Columbia, we feel tha- we would move stone into the state. I think that that would go into the section from Augusta out on the Georgia and Florida Railroad, and in that section, a radius of I should [fol. 491] say from 50 to 75 miles of Augusta. We are shipping a small tonnage now to Savannah that comes into competition with producers who are located in Georgia.

There are a few points here shown on Mr. Doss' exhibit 102-B, for instance, the rate from Columbia to Wrens, Ga., is $1.25, and from Lithonia the present rate is $1.10. The mileages there are approximately the same, Columbia being four miles nearer, but the present rate to Wrens from Lithonia is $1.10, which is 15 cents under our rate (Rec., 1794).

Crushed stone is being produced now at Lithonia.

Waynesboro, Ga., the Columbia mileage is 115 miles, and the rate is $1.25, and Lithonia is 148 miles, and the present rate is $1.20. If it were put on the interstate scale it would be $1.25.

I believe that you would find checking most of the points, that that would pretty generally cover it that it would bring the rates close together, and in some instances put the Columbia rates under the rates now enjoyed by the Georgia shippers.

Our plant is about 80 miles from the borderline. We have shipped as far as Brunswick. We ship rather extensively from our Columbia plant to points in South Carolina (Rec., 1795).

The South Carolina Railroad Commission recently issued an order putting in the rates as given in docket 17517, Scale 1, to apply either joint or single line for general application. In other words, the joint line differentials have been eliminated in South Carolina, on intrastate business, [fol. 492] just as in Georgia. I think we would enjoy a

little better competitive rate than we now have if the interstate rates were used. As long as the intrastate rates in Georgia remain as they are I should think the rates in South Carolina should be on the same basis with the rates in Georgia (Rec., 1796). I think the same rates should be in effect in this territory, interstate and intrastate. I advocate a uniformity in the level of the scales, both state and interstate.

Cross-examination.

By Mr. Webster:

After we lose a contract in some instances we attempt to analyze who gets the business and why, but it is hard to say anything definite as to whether our greatest competition in Georgia comes from Alabama and Georgia shippers. It is true that it comes from both. Where the greatest competition comes from would depend entirely upon conditions (Rec., 1797).

By Mr. Burchmore:

In shipping from our plant at Columbia, S. C., to Wren, Ga., the product would move over the Southern to Augusta and I believe Georgia and Florida from Augusta. I don't know whether there is any other route that might be used. If our competitors shipped from Lithonia, Ga., to Wren, Ga., it would move over the Georgia Railroad initially. I believe that is local to the Georgia Railroad. As far as I recall we had not shipped anything to Wren, but as I said at the start what we are really interested in more than anything else is future business. We have been in business at Co- [fol. 493] lumbia fifteen years, and I have been with the company four years, and as far as I can remember, at no time have we shipped to Wren (Rec., 1798). We have moved no stone to Swainsboro.

By Mr. Watkins:

The proportion of our companies' output sold in Georgia, has been very small. It was greater four years ago than it is now (Rec. 1799). With one or two exceptions it has been a small part of our business. Generally speaking there has not been a regular movement.

Redirect examination.

By Mr. Gwathmey:

As a rule the large tonnage for road jobs which takes the bulk of our stone is shipped to small out of the way places and so there is no way of telling when or where it will or will not move. There is no way of knowing definitely whether there is a likelihood of a shipment in future to any of the places named in Georgia (Rec., 1800). It depends upon whatever construction work is under way.

By Exam. Waters:

If we had an equality of rates from Columbia it would depend largely upon conditions at the time whether we could compete successfully with Georgia producers. I see no reason why we should not get a fair share of the business.

By Mr. Gwathmey:

We have moved a considerably tonnage of rock into Florida in the past through Georgia and have shipped a [fol. 494] great deal of our products into North Carolina (Rec., 1801).

By Exam. Waters:

We would hardly go more than 75 miles west of Columbia. The average haul of our traffic varies considerably. In 1926 and 1927 a large part of it was considered long haul movements. By that I mean interstate movements, say over 130 or 140 miles. In 1928 it was practically all intrastate within South Carolina (Rec., 1802).

(Witness excused.)

H. S. Angle was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I represent the Dixie Sand & Gravel Company, one of the principal complainants in the original case. I have just a statement that I want to submit at this time.

The Dixie Sand & Gravel Company, as one of the principal complainants in docket 17517 and allied cases, have no interest in the present proceedings, except to have the intrastate rates on sand and gravel in the territory involved harmonized with the interstate rates.

At the present time interstate shippers are penalized by the application of a joint line scale, whereas none exists in Georgia.

Furthermore, up to and including 440 miles there are 38 instances either for single or joint line application on interstate shipments, in which the present Georgia scale is at [fol. 495] variance with the scale prescribed by the Interstate Commerce Commission in docket 17517. Of this number, 29 represent rates which are lower for certain blocks than the interstate scale, and nine which are higher than the interstate joint line scale, while in 22 instances it is lower in amounts ranging from five to 25 cents per net ton.

We have no desire at this time to submit any additional testimony but wish merely to state that we can see no reason or (Rec., 1803) justification for a plant located just over the state line from Chattanooga being permitted to ship to joint line haul points in Georgia on a single line scale, while Chattanooga is compelled to use a joint line scale with rates from five to 25 cents per net ton higher for the same distances and over the lines of the same carriers.

In short, our contention is that there is no justification for different scales on sand, gravel, and crushed stone on interstate traffic than apply on intrastate traffic for hauls of the same length. I have no exhibits to offer.

(Witness excused.)

L. V. Crane was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Walker:

I am assistant to the vice-president in charge of the traffic of the Southern Railway System Lines, with headquarters at Washington, D. C. (Rec., 1805). I testified in the previous hearing of docket 17517 and since then have prepared [fol. 496] certain exhibits which I desire to offer.

In connection with my exhibit 103-B, I want to call particular attention as to the manner in which even the present Georgia scale is applied in connection with rates on sand from pits on the Atlanta, Birmingham, & Coast Railroad, and Central of Georgia Railroad, in the vicinity of Junction City, Ga.

(The same was thereupon received in evidence marked "Carriers' Exhibit No. 103-B, Witness Crane".)

The pits on the Central of Georgia Railway are local to that line, and likewise the pits on the Atlanta, Birmingham, & Coast Railroad are local to that line (Rec., 1805). That is not a part of a system, it is operated separately.

The short line distance from Junction City, Ga., to Atlanta, Ga., over the Atlanta, Birmingham & Coast Railroad is 104 miles, and the present Georgia scale for that distance is $1.00 per ton, and the docket 17517 scale for that distance would be $1.10 per ton.

That is the Atlanta, Birmingham & Coast all the way.

From the pits on the Central of Georgia Railway which are located between Howard and Junction City, Ga., the Central of Georgia under the present tariff provides for the application of Junction City rates from those pits. There is no connection between the Central of Georgia Railway and the Atlanta, Birmingham & Coast Railroad at Junction City. No interchange, no, sir.

The haul over the Central of Georgia Railway to Atlanta, from Howard, Ga., is 163 miles, and from Junction City, [fol. 497] Ga., 166 miles, and these pits are located somewhere between Howard and Junction City on the Central of Georgia Railway (Rec., 1806), so that the sand which moves from these Central of Georgia pits to Atlanta, moves somewhere in the neighborhood of 163 miles or 166 miles, but it moves at a rate that is $1.00 and is based on the distance of 104 miles over the Atlanta, Birmingham & Coast Railroad.

Generally speaking, the rates on traffic generally from local stations on the Atlanta, Birmingham & Coast Railroad or from stations on the Central of Georgia Railway to Atlanta, Ga., are restricted so as to apply only over that line. However, that does not appear to be the case with respect to rates on sand. Although these pits are local to these two lines, the rates that are applied to the traffic are the Junction City rates, and the rates from Junction City

are not restricted as to routing, and apparently the tariff can be applied for joint line movement from those pits to Atlanta.

For example, from Junction City, Ga., under the head of Central of Georgia Railway, the rate can be applied for Southern Railway delivery via Central of Georgia Railway, Fort Valley, Ga., and Southern Railway, as shown opposite the letter G, and in the absence of restrictions in the tariff the $1.00 rate based on the Atlanta, Birmingham & Coast distance would be applied over that route. We have never joined in any such route with the Central of Georgia Railway (Rec., 1807).

It is our position that if the route is to be kept open, that there should be charged over that route the mileage scale [fol. 498] for the distance via that route.

Under the present Georgia scale it would be $1.20 per ton, and under the interstate scale it would be $1.35 per ton.

Going back to the rates for Central of Georgia Railway delivery, and having in mind that there is no connection between the Central of Georgia Railway and the Atlanta, Birmingham & Coast at Junction City, Ga., the rate under the interstate scale from the Central of Georgia points in the vicinity of Junction City to Atlanta would be $1.30 per ton. The rate from Junction City, Ga., via the Atlanta, Birmingham & Coast Railroad is also unrestricted as to routing, and so far as the tariff is concerned, apparently it would apply via Atlanta, Birmingham & Coast, Woodbury and Southern Railway.

Under the Georgia order, and the $1.00 rate would apply. In that way this sand could get not only delivery on the Southern Railway at Atlanta for private and assigned sidings, but also team track delivery. The Southern Railway has never authorized a route with the Atlanta, Birmingham & Coast Railroad from these points on the Atlanta, Birmingham & Coast to Atlanta, and it is our position that if any such route is kept open, the rate to be applied should be the mileage rate for the distance over that route.

In the exhibit is also shown the rates from Gailliard, Ga., on our Fort Valley branch. The rate from Gaillard of $1.00 to Atlanta applies only via the Southern Railway.

While the exhibit also shows the rates from Gaillard to Atlanta in connection with the Atlanta, Birmingham &

[fol. 499] Coast, Central of Georgia, and Atlanta & West Point, as a matter of fact the exhibit is not altogether accurate in that respect. There are no rates over those routes. There is only one rate from Gaillard to Atlanta, and that is the rate over the Southern Railway Company, and the rates shown under the heading of present rates to Atlanta for the Atlanta, Birmingham & Coast, Central of Georgia, and Atlanta, Birmingham & Coast, Central of Georgia, and Atlanta & West Point, are nothing more than the Georgia scale for those particular distances.

The rate from Gaillard to Atlanta via the Southern Railway provides that when the shipments are for delivery on connecting lines at Atlanta, the rate which will apply on those shipments will be the Atlanta rate less $2.25 per car. In other words, we will absorb connecting line switching to the extent of $2.25 per car (Rec., 1809). Ordinarily we do not absorb switching charges from local territory like Gaillard, Ga., but we had to do that in order to meet competition from these Central of Georgia railway pits where under their switching tariff they authorize the absorption of switching charges at Atlanta to the extent of $2.25 per car.

Going back to Junction City via the Atlanta, Birmingham & Coast Railroad, it will be noted that the rates to Atlanta as well as to points in the Atlanta District as shown on the exhibit, are invariably less than the rates for corresponding distances under the interstate mileage scale. The rates from Junction City, Ga., via the Central of Georgia Railway, or the rates from Howard, Ga., via the Central of Georgia Railway to Atlanta, or to points in the Atlanta district, are substantially less than the rates under [fol. 500] the interstate mileage scale, due to the fact that from these local pits on the Central of Georgia Railway, the Central of Georgia in the present tariff authorizes the application of Junction City rates from their pits. It is my understanding that until recently all of the shipments from the Central of Georgia Railway pits were waybilled from Junction City, and that may still be the practice, but in any event in a recent supplement to the Georgia tariff, the Central of Georgia Railway Company had inserted a note providing for the application of Junction City rates from Heath Track, Kirkpatrick sand pit track, and Kirkpatrick wash track. I assume those are the names of those

pits on the Central of Georgia Railway between Junction City and Howard, Ga. (Rec., 1810).

Under my heading of Present Rate, I mean those are the present rates in effect from and to those points. By Georgia scale, I called attention to the fact that the Central of Georgia Railway from their pits do not even apply the Georgia scale, but rather apply Junction City rates made via the Atlanta, Birmingham & Coast Railroad, although there is no connection between the Central of Georgia and the Atlanta, Birmingham & Coast at Juncition City, Ga. Moreover, even if there were a connection between the Central of Georgia Railway and the Atlanta, Birmingham & Coast at Junction City, Ga., and the interstate scale were applied, it would be the interstate joint line scale rather than the interstate single line scale.

The pits on the Central of Georgia are somewhere between Junction City and Howard, Ga., and it is only four miles from Junction City to Howard. That is what is [fol. 501] called the Junction City district (Rec., 1811).

I just wanted to call attention specifically to this situation because the source of discrimination flows not only from the fact that the Georgia scale is less than the interstate scale, but also because the present Georgia mileage scale is not applied from these pits, more particularly on the Central of Georgia Railway.

My exhibit No. 104-B is a statement of the present rates from Birmingham, Montgomery and Chattanooga to Atlanta and points in the Atlanta district.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 104-B, Witness Crane".)

All of the rates shown on exhibit 104-B are based on the docket 17517 scale.

There should be one correction made on this exhibit, the rate from Montgomery, Alabama, to Fort McPherson, Georgia, should be $1.30 per ton instead of $1.40 per ton, and as to that rate from Montgomery, Alabama, to Fort McPherson, Georgia, it is not exactly on basis of the interstate scale. The interstate scale would provide a rate of $1.40 for that joint line distance, but apparently inasmuch as the rate from Montgomery to Atlanta on the scale is $1.30, and inasmuch as it appears that there is some sort of joint arrangement between the Central of Georgia Rail-

way and the Atlanta & West Point Railroad between East Point and Atlanta, they evidently figure in some way that under the fourth section they are not permitted to carry a [fol. 502] rate higher than the Atlanta rate to Fort McPherson, Ga. (Rec., 1812). I am not familiar with that situation, but aside from this rate from Montgomery to Fort McPherson, all the other rates shown on the exhibit 104-B, are exactly on basis of the docket 17517 scale.

They are joint line or single line according to the routes shown below here.

My exhibit 105-B is similar to an exhibit filed by Mr. Doss, and merely shows the former Georgia scale, the present Georgia scale and the interstate scale. That exhibit consists of two pages.

(The same was thereupon received in evidence, marked "Carriers' Exhibit 105-B, Witness Crane".)

The joint line traffic handled by the Southern Railway in Georgia is shown by Exhibit 106-B (Rec., 1813), which has two pages, the first showing the intrastate tonnage of the Southern and the second page the intrastate tonnage of the Georgia Southern and Florida Railway for the first four months of 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 106-B, Witness Crane").

From the first page of exhibit 106-B, it will be noted that of the 2665 cars of gravel and sand which the Southern Railway handled intrastate in Georgia for the first four months of 1928 1111 cars were for hauls entirely on the Southern Railway, and 1554 cars were either delivered to connections or received from connections.

Of the cars which originated on the Southern Railway Company, 1111 cars were destined to points on thee South-[fol. 503] ern Railway, and 623 cars were destined to points on connecting lines. In other words, of the sand and gravel originated on our line, the majority was destined to points on our line, but taking into account cars which we received from connections, there were a greater number of cars which moved for joint line movement than for single line movement.

That is on sand and gravel.

On crushed stone there were 178 cars which originated and were destined to points on the Southern Railway (Rec,. 1814). There were 89 cars which originated on the Southern Railway and destinated to points on connecting lines.

We received from connections, 882 cars which were destined to points on our lines, and we also received 586 cars from connecting lines which we delivered to another connecting line. In that case there were 1557 cars for joint line movement, and but 178 cars for single line movement, on crushed stone.

The second page of the exhibit is gotten up in similar form, except that it covers the Georgia, Southern & Florida Railway, instead of the Southern Railway, and, of course, the tonnage of the Georgia, Southern & Florida Railway is very much less than the Southern Railway tonnage. It also shows that the preponderance of movement handled by the Georgia Southern and Florida was joint line traffic (Rec., 1815).

The Georgia order became effective May 1, 1928, but those were the only figures we had available at the time this was made up. You will probably recall that in former statistics we merely showed the number of cars originated and the number received from connections (Rec., 1815).

[fol. 504] Beginning this year, we show the cars originated by us and the number of these cars that went to connections, and likewise we show as to cars received from our connections whether they went to points on our line or to other connections.

During this period was the joint line differential in effect within the state of Georgia, under the Georgia Commission's own order.

There was a joint line differential up to 110 miles.

Exhibit No. 107-B covers the entire Southern Railway Company and the entire Georgia Southern & Florida Railway for the first four months of 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 107-B, Witness Crane.")

You will note as to the Southern Railway, on gravel and sand, that there were 6262 cars which originated and were destined to points on the Southern Railway and 8385 cars which were either received from connections or delivered to connecting lines (Rec., 1816).

As to crushed stone, there were 6415 cars which originated at and were destined to points on the Southern Railway, and 5842 cars which were received from and delivered to connections.

The second page of exhibit 107-B shows similar information as to the Georgia, Southern & Florida Railway.

You will understand from these exhibits that there is a considerable amount of joint line tonnage in the movement of sand and gravel, crushed stone and related articles. As to whether that is fairly representative of the South as a whole I can't tell you except as to our lines. Along the lines of your question, Mr. Examiner, and hav- [fol. 505] ing in mind the situation in South Carolina, where the South Carolina Commission recently wiped out the joint line arbitrary, in the first four months of this year the Southern Railway Company in South Carolina had 1327 cars of sand and gravel which originated on its line and which were destined to points on its line. As to traffic received from connections, or delivered to connections, the number of cars was 1948.

Now, as to crushed stone, the situation was somewhat different. We had 2896 cars of crushed stone which originated on our line, and which were destined to points on our line, and 813 cars which were received from and delivered to connections.

That was in South Carolina alone.

Now, in Alabama we had a total of 1194 cars of sand and gravel, and of that number 515 cars were originated on our line, and were destined to points on our line.

As to crushed stone, we had 412 cars, and of that number, 39 originated at and were destined to points on our line. But the figures for the whole system are included in my exhibit 107-B.

Exhibit 108-B compares the present rates from Chattanooga, Tenn., on sand and gravel, which are on basis of the docket 17517 scale, with present rates from Gaillard, Ga., and what the present rates from Gaillard would be on basis of the docket 17517 scale to points on the Southern Railway in Georgia.

(The same was thereupon received in evidence, marked "Carriers Exhibit No. 108-B, Witness Crane.")

Going down the first page of this exhibit you will find numerous instances where the present Georgia rates are

lower than they would be on basis of the interstate scale. [fol. 506] There is one case, Carbondale, Ga., where the rate on the Georgia scale is higher than on basis of the interstate scale (Rec., 1818).

On page 2 of the exhibit there are likewise numerous instances where the rates from Gaillard on basis of the present Georgia scale are lower than they would be on basis of the interstate scale.

The distances are not always comparable, but I am measuring the rates from both points by the scale prescribed by the Interstate Commerce Commission. I have taken practically all of our stations in Georgia.

You will also note, that from Gaillard, Ga., the distances which control the present Georgia rates are often different from the distances which would fix the rates under the interstate scale. That is due to the fact that under the Georgia scale there is not any joint line arbitrary, and you just use the short line distance, whereas under the interstate scale of ten times a single line distance with the single line scale would make a lower rate than the shorter line distance with the joint line scale.

The third page of exhibit 108-B, also shows a large number of instances where the present rates from Gaillard, Ga., are less than they would be on the interstate mileage scale (Rec., 1819).

Exhibit 109-B compares the rates on gravel from Chattanooga, Tenn., to points on the Southern Railway in Georgia which are on basis of the docket 17517 scale, with the present rates on the Georgia scale from Stockbridge, Ga., compared with what the rates would be from Stockbridge, on the basis of the docket 17517 scale.

[fol. 507] (The same was thereupon received in evidence, marked "Carriers' Exhibit No. 109-B" Witness Crane.")

Going through this exhibit it will be found that there are numerous instances where the rates from Stockbridge, Ga., are lower than they would be on basis of the interstate scale.

On page 2 of the exhibit there are some instances for extremely long hauls where the present Georgia rates are higher than they would be on basis of the interstate scale. You will notice as to Brunswick, Ga., and some points intermediate to Brunswick.

Exhibit No. 110-B compares the rates from Chattanooga, Tenn., to points on the Southern Railway in Georgia with the present Georgia intrastate rates from Lumber City, Ga., to the same stations, and what the rates would be on the basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 110-B, Witness Crane.")

Here you will note on the first page that even as to Atlanta, Ga., the rate from Stockbridge, Ga. is five cents less than it would be on basis of the interstate scale.

On the second page of this exhibit there are numerous instances where the present Georgia rates are higher than they would be under the interstate scale.

That is for the longer distances.

On the third page of the exhibit there are some instances where the present Georgia rates are higher, and in other instances they are lower than the rates would be on basis of the interstate scale.

[fol. 508] Exhibit No. 111-B is a comparison of the present rates from Chattanooga, Tenn., to stations in Georgia on the Southern Railway, with the present Georgia state rates from Junction City, Ga., to the same stations, and also what the rates from Junction City would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 111-B, Witness Crane.") (Rec., 1821.)

Mr. Brooker: Mr. Examiner, may I call attention to a correction on this exhibit in the distance from Junction City, Ga. to Atlanta, Ga.? The route reference should be changed also. That should be 104 instead of 101, and the route reference should be F instead of E.

An examination of Exhibit 111-B will show that with the exception of the rate to Columbus, Ga. the present rates from Junction City, Ga. to all of these Southern Railway stations are less than they would be on basis of the docket 17517 scale.

Exhibit 112-B shows the rates on sand and gravel from Chattanooga, Tenn., to Georgia Railroad and Atlanta & West Point Railroad stations, compared with the present rates, and also what the rates would be on basis of the docket 17517 scale from Gaillard, Ga.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 112-B, Witness Crane.")

With the exception of the rate from Gaillard, Ga., to Atlanta, Ga., which in reality applies only over the Southern Railway, the present rates from Gaillard, Ga., to stations on the Georgia Railroad and the Atlanta & West Point Railroad are less than they would be under the docket 17517 scale.

[fol. 509] Of course, the rates from Chattanooga, Tenn., to these stations are on basis of the docket 17517 scale (Rec., 1823).

Exhibit 113-B shows the present rates from Chattanooga, Tenn., which are on basis of the docket 17517 scale, and the present rates from Gaillard, Ga., to Central of Georgia Railway stations in Georgia.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 113-B, Witness Crane.")

The exhibit also shows what the rates from Gaillard would be on basis of the docket 17517 scale.

An examination of this exhibit will show that with the exception of two destinations on page 2, the present Georgia intrastate rates are less than they would be on basis of the docket 17517 scale.

Exhibit 114-B shows the rates on sand and gravel from Chattanooga, Tenn. to Georgia, Southern & Florida Railway stations, compared with the present rates from Gaillard, Ga., and what the rates from Gaillard would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 114-B, Witness Crane.")

The rates from Chattanooga are already on basis of the docket 17517 scale, and it will be observed that the present rates from Gaillard are invariably less than the rates would be under the docket 17517 scale.

Exhibit 115-B shows the present rates on sand and gravel from Chattanooga, Tenn. to Georgia, Southern and Florida stations, compared with the rates from Junction City, Ga. to the same destinations, and what the rates would be from Junction City on basis of *of* the docket [fol. 510] 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 115-B, Witness Crane.")

Here again, it will be observed that the present rates from Junction City, are invariably less than they would be on basis of the docket 17517 scale.

Exhibit 116-B shows the present rates from Chattanooga, Tenn. to stations in Georgia, on the Louisville & Nashville Railroad, compared with the present rates from Gaillard to the same stations, and what the rates from Gaillard, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 116-B, Witness Crane.")

Omitting Atlanta, which rate from Gaillard applies only via the Southern Railway, the rates in Exhibit 116-B from Gaillard, Ga., are invariably lower than they would be on basis of the docket 17517 scale.

Exhibit 117-B shows the present rates from Chattanooga, Tenn. to stations on the Seaboard Air Line in Georgia, between the Georgia-Alabama state line and Hamlet, N. C., the present rates from Gaillard, to the same destinations and what the rates from Gaillard would be on basis of the docket 17517 scale (Rec., 1824).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 117-B, Witness Crane".)

Omitting Atlanta again, the present rates from Gaillard are lower than they would be on basis of the docket 17517 scale.

Exhibit 118-B is a similar exhibit comparing the rates on gravel from Chattanooga, Tenn. to stations on the South-
[fol. 511] ern Railway in Georgia, with rates on crushed stone from Lithonia, Ga.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 118-B, Witness Crane".)

The docket 17517 scale would make no change in the present rate from Lithonia to Atlanta, Ga., but it would change the rates from Lithonia to Atlanta, Ga., but it would change the rates to all of the stations shown on the Southern Railway as indicated on the exhibit, for example, to Macon, Ga., the rate from Lithonia would be $1.25 on basis of the interstate scale instead of $1.10 as it is under the present Georgia scale.

Exhibit 119-B compares rates on sand and gravel from Chattanooga, Tenn. to Nashville, Chattanooga & St. Louis stations in Georgia, with rates from Junction City, Ga. to the same stations, and what the rates from Junction City would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 119-B, Witness Crane".)

With the exception of one destination, the present rates from Junction City are less than they would be on basis of the docket 17517 scale. I didn't investigate as to what points there are for shipments in Chattanooga to Georgia destinations so as to show every station. I have some information as to where some shipments have been made. My investigations disclose that. The movement of these materials from practically all the origins changes from time to time. In other words, the movement one month may be different than from the previous month, and the movement [fol. 512] one year may be different from the previous year, that is as to the destinations to which many of the shipments go (Rec., 1826). Of course, there are points such as the larger cities where the movements are right regular, but to the small points there is quite a variation in the situation from time to time. In my exhibit No. 114-B, I used the word joint lines scale from Gaillard to points of Georgia, Southern and Florida, that is, rates that would apply if the docket 17517 scale was effective, that is to say in my exhibit 114-B, I show that the docket 17517 joint line scale would make the rates from Gaillard, Ga., to points on the Georgia, Southern & Florida Railway. I was asked whether the single line scale applied to the distances over the Southern Railway in connection with the Georgia, Southern & Florida Railway would not be lower than the rates under the joint line scale, and for the joint line distances as shown on my exhibit. They would not be lower. The joint line scale for the joint line distances makes lower rates than would be produced by the single line scale for the distances over the Southern Railway in connection with the Georgia, Southern & Florida.

As an illustration, take Worth on the Georgia, Southern and Florida for a shipment from Gaillard, there are two different railroads, the Southern Railway and the Georgia, Southern & Florida, but under this interstate scale we apply

the single line scale between the Southern Railway and the Georgia, Southern & Florida.

By Mr. Burchmore:

Q. I don't want to debate that with you, I don't know anything about it. As a matter of fact, is it proper or necessary under docket 17517 to give the single line scale to [fol. 513] a joint movement over the Southern Railway and the Georgia, Southern & Florida (Rec., 1828)?

A. The Commission in the Live Stock case—I don't recall the docket number—found that as to live stock the single line scale should be applied for interline movements between Southern Railway System lines, and we have applied the docket 17517 scale in a similar manner.

From Gaillard to Worth is 77 miles over the Southern Railway, Fort Valley, Central of Georgia, Atlanta, Birmingham and Coast, and Georgia Southern and Florida, and produces a lower rate than via the Southern Railway and Georgia Southern & Florida, which is a distance of 263, via the Southern to Atlanta, to Macon, and thence via the Georgia, Southern & Florida, which would be the Southern System. And we apply single line rates under the decision of the Commission, in other words, the short line distance is 77 miles, represented by those four lines, and would make a rate of $1.05 (Rec., 1829).

Exhibit 120-B shows the present rates on sand and gravel from Montgomery, Ala., to stations in Georgia on the Nashville, Chattanooga & St. Louis Railway, compared with the present rates from Gaillard, Ga., and what the rates would be on the basis of the docket 17517 scale from Gaillard, Ga.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 120-B, Witness Crane.")

With the exception of the rate from Gaillard, to Atlanta, which applies only over the Southern Railway, the rates from Gaillard to points reached by the Nashville, Chattanooga & St. Louis Railway are less than they would be on basis of the docket 17517 scale.

[fol. 514] Of course I have merely selected Gaillard on exhibit 120-B, for example, to illustrate the situation. I could have used Junction City just as well as a point of origin and have shown substantially the same situation, that is that the rates from Junction City, Ga., for example,

to Nashville, Chattanooga, & St. Louis stations in Georgia are less than they would be on basis of the docket 17517 scale (Rec., 1830).

Exhibit 121-B shows the present rates on slag from Birmingham, Ala., to points in Georgia on the Southern Railway, compared with the present rates on stone from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 121-B, Witness Crane.")

The haul from Lithonia, to Atlanta, as shown on the first page of the exhibit, is a single line haul, and there would be no change in that rate, but the rates to practically all other stations shown on the exhibit from Lithonia, Ga., are less than they would be on basis of the docket 17517 scale.

You will note on page 3, to Macon, Ga., the present rate from Lithonia is $1.10 per ton, and on basis of the docket 17517 scale it would be $1.25 per ton. Some of these rates differ as much as 25 cents a ton. You will recall that in certain instances the present Georgia scale is lower than the docket 17517 scale, single line scale. The blocking is also somewhat different under the present Georgia scale (Rec., 1831).

Going back to exhibit 105-B, the Georgia single line scale [fol. 515] is less than the interstate single line scale, at 45 miles, 50 miles, 65 miles, 70 miles, 85 miles, 95 miles and 110 miles. That is the Georgia scale applied for single line hauls.

Exhibit 122-B shows the present rates on slag from Birmingham, Ala., to points in Georgia on the Geogia, Southern & Florida Railway, compared with the present rates on crushed stone from Lithonia, Ga., to the same stations, and what the rates from Lithonia, would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 122-B, Witness Crane".)

I assume it is understood that these rates from interstate points into Georgia are on basis of the docket 17517 scale.

That is true of all the interstate rates shown on all of these exhibits.

Exhibit 123-B compares the rates on slag from Birmingham, Ala., to stations in Georgia on the Seaboard Air Line, with the rates on crushed stone from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 123-B, Witness Crane".)

Exhibit 124-B shows the present rates on slag from Birmingham, Ala., to stations in Georgia on the Nashville, Chattanooga & St. Louis Railway, compared with the present rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit 124-B, Witness Crane.")

With the exception of Atlanta, the rates to points shown [fol. 516] on this exhibit, from Lithonia, Ga., are lower than they would be on basis of the docket 17517 scale.

On exhibit 123-B here again it will be noted that with the exception of Atlanta, which is a single line haul from Lithonia, Ga., the rates from Lithonia, to Seaboard Air Line Railway stations are less than they would be on basis of the docket 17517 scale.

Exhibit 125-B shows the present rates on slag from Birmingham, Ala. to stations in Georgia, on the Central of Georgia Railway, compared with the rates on crushed stone from Lithonia, Ga. to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale (Rec. 1833).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 125-B, Witness Crane".)

It will be noted that the present rates from Lithonia, Ga., to stations on the Central of Georgia Railway are invariably less than they would be on basis of the docket 17517 scale. Not all the time are short line distances shown because sometimes a single line scale for the longer single line distance will make a lower rate than the shorter line distance. The rates I have shown are the present rates and the exhibit shows the distances and the routes over which the distances are made which determine the rate and you

can tell from the route whether it is a single line or joint line rate (Rec. 1834).

Exhibit 126-B shows the present rates on slag from Birmingham, Ala., to stations in Georgia on the Atlantic Coast Line Railroad, compared with the present rates on crushed stone from Lithonia, Ga., to the same destinations, and [fol. 517] what the rates from Lithonia, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 126-B, Witness Crane".)

There are numerous instances where the present rates from Lithonia, Ga., are lower than they would be on basis of the docket 17517 scale.

Exhibit 127-B shows the present rates on slag from Birmingham, Ala. to stations in Georgia on the Georgia Railroad, and Atlanta & West Point Railroad, compared with rates on crushed stone from Lithonia, Ga., to the same destinations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 127-B; Witness Crane".)

On the first page of the exhibit, the present rates from Lithonia are lower than they would be on basis of the docket 17517 scale to Madison, Ga., Greensboro, Ga., Crawfordsville, Barnett and Browns, Ga., and on the second page of the exhibit all of the present rates from Lithonia, Ga., are less than they would be on basis of the docket 17517 scale (Rec. 1835).

Exhibit 128-B shows the present rates on crushed stone from Fascot, Tenn., to points in Georgia on the Southern Railway, compared with the present rates from Stockbridge, Ga., to the same stations, and what the rates from Stockbridge would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 128-B, Witness Crane.")

On pages 1, 2 and 3, there are numerous instances where the present rates from Stockbridge, Ga., are lower than [fol. 518] they would be on basis of the docket 17517 scale, and on the bottom of page 3, and in some instances on page

4, the present rates from Stockbridge, Ga., are higher than they would be on basis of the docket 17517 scale.

Exhibit 129-B shows the present rates from Mascot, Tenn. compared with the present rates from Lithonia, Ga. and what the rates from Lithonia, Ga., would be on basis of the docket 17517 scale, to points in Georgia on the Nashville, Chattanooga, & St. Louis Railway.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 129-B, Witness Crane") (Rec., 1836).

Crushed stone is produced at Mascot. Exhibit 130-B is a similar exhibit comparing the present rates from Mascot, Tenn. to points in Georgia on the Southern Railway, with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on the basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 130-B, Witness Crane".)

Exhibit 131-B is a similar exhibit comparing the present rates from Mascot, Tenn. to points in Georgia on the Seaboard Air Line Railway, with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Caariers' Exhibit No. 131-B, Witness Crane".)

Exhibit 132-B is a similar statement comparing the present rates on crushed stone from Mascot, Tenn. to points in Georgia on the Central of Georgia, with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 [fol. 519] scale (Rec., 1837).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 132-B, Witness Crane".)

As to the interstate points like Mascot, Birmingham and the like to points in Georgia, I know, that there is a general movement from Birmingham into the state of Georgia, and I know that Mascot does ship to a number of stations in the state of Georgia. I don't know whether they would under-

take to ship to all of these stations, but contracts may develop at some of these stations, where they would like the opportunity of getting in there on these contracts. I know that they ship as far south as Macon, Ga. They ship to Atlanta, Ga. I understand the Birmingham people will testify respecting their own situation (Rec. 1838).

Exhibit 133-B is a comparison of the present rates on crushed stone from Mascot, Tenn. to points in Georgia on the Atlanta, Birmingham & Coast Railroad, with the present rates from Lithonia, Ga., and what the rates from Lithonia, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 133-B, Witness Crane".)

Exhibit 134-B shows the present rates on crushed stone from Columbia, S. C. to points in the state of Georgia on the Southern Railway, compared with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 134-B, Witness Crane.")

Exhibit 135-B is a similar exhibit comparing the rates [fol. 520] on crushed stone from Columbia, S. C., with the rates on crushed stone from Lithonia, Ga., to stations in Georgia on the Central of Georgia.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 135-B, Witness Crane") (Rec., 1839).

Exhibit 136-B is a similar exhibit comparing rates on crushed stone from Columbia S. C., with rates on crushed stone from Lithonia, Ga., to stations in Georgia on the Seaboard Air Line Railway.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 136-B, Witness Crane.")

The exhibits which I will now discuss compare the rates from Montgomery, Ala. with the rates from Junction City and Gaillard, Ga., to destinations in the state of Georgia.

Of course, the Southern Railway does not serve Montgomery, Ala., but I am merely making these comparisons

to complete the picture, and I thought it desirable to have a comparison of rates from these Georgia points with the rates from Montgomery to points in Georgia, because I have heard it said that with a joint line scale to much of the Georgia territory the rates from the Georgia points would become higher than from interstate points, and particularly Montgomery.

Exhibit 137-B shows the present rates on sand from Montgomery, Ala., to points on the Southern Railway, in Georgia, compared with the rates from Junction City, Ga., and what the rates from Junction City would be on basis of the docket 17517 scale (Rec. 1840).

(The same was thereupon received in evidence, marked [fol. 521] "Carriers' Exhibit No. 137-B, Witness Crane".)

Exhibit 138-B shows the present rates on sand from Montgomery to Georgia, Southern & Florida Railway stations in Georgia, with the present rates from Gaillard, Ga., to the same stations, and what the rates from Gaillard would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 138-B, Witness Crane.")

Exhibit 139-B shows the present rates on sand and gravel from Montgomery, Ala. to points on the Georgia, Southern & Florida, compared with the present rates from Junction City, Ga. to the same stations, and what the rates from Junction City would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 139-B, Witness Crane".)

Exhibit 140-B shows the present rates on sand and gravel from Montgomery, Ala., to points on the Georgia Railroad and the Atlanta, & West Point Railroad, compared with the present rates from Gaillard, Ga. to the same stations, and what the rates from Gaillard would be on basis of the docket 17517 scale (Rec. 1841).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 140-B, Witness Crane.")

Exhibit 141-B shows the present rates on sand and gravel from Montgomery, Ala., to points on the Atlantic Coast Line Railroad in Georgia, compared with the present rates from Gaillard, Ga. to the same stations and what the rates from Gaillard, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 142-B, Witness Crane") (Rec.,

[fol. 522] Exhibit 142-B shows the present rates on sand and gravel, from Montgomery, Ala., to stations in Georgia on the Seaboard Air Line Railway, compared with the present rates from Gaillard, Ga., to the same stations, and what the rates from Gaillard would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No 142-B, Witness Crane.") (Rec., 1842).

As to traffic which we originate in Georgia, or the traffic which comes from one of our short line connections, the Gainesville & Northwestern Railroad, that practically the entire movement is for hauls 200 miles and less. I tried to get figures as to the revenue effects of the establishment of the Georgia scale as compared with the interstate scale, but was unable to make any consolidated figures.

As to the traffic originated by the Southern Railway in Georgia, for the months of May, June, July and August, 1928, and including also shipments we received from the Gainesville & Northwestern Railway at Gainesville, Ga., the docket 17517 scale would produce revenue approximately $12,000 greater than the present Georgia scale. On an annual basis that would be approximately $36,000. Of course, that is only as to shipments which the Southern Railway originated, or which originated on the Gainesville & Northwestern Railway delivered to us at Gainesville, Ga. That computation covered 2342 cars. I can't say that the Southern Railway is the largest carrier of this commodity in Georgia. The Central of Georgia, and the Atlanta, Birmingham & Coast have a substantial movement in sand. Beyond that I can't say.

Of course, there were many movements on which there [fol. 523] would be no change in revenue whatever. For example, from Gaillard, Ga., to Atlanta, the docket 17517 scale and the Georgia scale produce the same rate, and there is a substantial movement there. I suppose that on the actual cars on which there would be an increase in revenue on basis of the docket 17517 scale, would be a great deal more than $5.00 per car (Rec., 1844).

Atlanta, Ga., November 27, 1928.

Before H. F. Waters, Examiner

Met pursuant to adjournment.

Appearances: Same as before. Following additional appearance filed: T. J. Burke, Charleston, S. C., appearing for the South Carolina Highway Commission.

In my exhibits showing rates on crushed stone, from Lithonia, Ga., while it is shown that the rate from Lithonia, Ga., to Atlanta, Ga., for a distance of 24 miles over the Georgia Railroad, the rate under the Georgia scale is the same as the rate under the interstate scale, that is not true of rates to points in the Atlanta district (Rec., 1846).

For example, it is six miles from Atlanta out to East Point, Ga., which would make a total distance of 30 miles from Lithonia, Ga. to East Point, Ga., and the Georgia scale would produce for that distance a rate of 60 cents, whereas the interstate scale would produce for that distance a rate of 75 cents.

Another station is Chattahoochee, Ga., where the distance from Atlanta is eight miles, making a total distance of 32 [fol. 524] miles, from Lithonia, Ga. to Chattahoochee, Ga., and the Georgia scale for that distance produces a rate of 70 cents, whereas the interstate scale produces a rate of 85 cents. No, the rates from Lithonia are not less than the Georgia scale. I said the rate from Lithonia, Ga. to Atlanta, on the Georgia scale was the same as the interstate scale, but that that is not true of rates from Lithonia, Ga., to points in the Atlanta district (Rec., 1847).

Cross-examination.

By Mr. Burchmore:

My exhibit 108-B and subsequent exhibits shows as tariff authority schedule known as Agent J. H. Glenn's I. C. C.

A-655 and Agent J. H. Glenn's I. C. A. A-529. Your understanding is correct that I. C. A. A-655 is the interstate tariff, under which interstate sand and gravel rates covered by my exhibits are generally found. When we talk about that tariff we refer to the one that contains most of the rates for interstate transportation we are discussing in this case. In some cases, the rates on sand, gravel, crushed stone and so forth in this tariff are published as specific point to point rates, while in other cases, the mileage scale as contained in the tariff determines the rate (Rec., 1848).

The tariff does of course contain a large number of point to point rates. If I wanted to know the rate from the point of origin to a destination interstate where there is a substantial movement, I should ordinarily expect to find a specific point to point rate in the tariff, and if I didn't I would then turn to the use of the scale. In preparing my exhibits I sought to use the specific rates where they were so published. If there is a typographical error or mistake [fol. 525] in computation in the tariff so that the rate from a station in Tennessee to a station in Georgia is a different figure than would be produced by the application of the scale for the correct distance, my exhibit should agree with the specific tariff rate rather than with the scale because that is what I intended it should show (Rec., 1849).

Q. Now do the rates as they are published in the tariff from Chattanooga, Mascot, Birmingham, and so forth, to stations in Georgia, apply under the routing instructions in the tariff, if any, over all of the routes used in your exhibits by which you have shown mileages?

A. I think that is generally true, although the traffic may not necessarily move over those routes. I have not checked to see whether the rate I have named in my exhibits is actually applicable under the tariff over the route by which I computed the mileage, but when we issued this interstate tariff, we were not able to work out routing instructions in connection with the rates. This has been true of many of these common tariffs published in recent years based on general scales described by the I. C. C. We are working on a general routing tariff, which it is hoped will ultimately apply in connection with all these general tariffs (Rec., 1850).

It is true that each of the defendant railroads has filed with the Georgia Commission and with the I. C. C. tariffs

naming the distances between points on their respective lines. There is not a schedule published that is available to the public as its schedule or tariff showing the distances for joint line hauls such as I have set forth in my exhibits, [fol. 526] but you can look in several tariffs and find it, but to do so it will be necessary for you to determine the junctions to be employed and add the separate factors, just as you would determine the lowest combination rate if you had no joint through rate (Rec., 1851).

In computing the distances used in my exhibits 108-B to 142-B for interstate movements I have not in all cases used the shortest routes over which carload traffic can be moved without transfer of lading. As I said yesterday, I have used the distance which makes the lowest rate, that is, the shortest joint line distance in connection with the joint line scale and the shortest single line distance in connection with the single line scale. And in computing the distance I have used the shortest route over which a carload traffic can be moved without transfer of lading.

Q. Now in determining whether particular hauls are single line or joint line, have you endeavored to regard carriers under common control or management as constituting one line?

A. The tariff provides for the application of the scale in that respect.

Q. You have endeavored to do that in your exhibit here?

A. I have followed the application of the scale as published in the interstate tariff.

Q. Yes, but a few minutes ago you said you sometimes disregarded the single line where the joint line would make the lower rate.

A. That does not go to the last question you were talking about (Rec., 1852).

[fol. 527] Q. Now, in your opinion as an officer and witness for the Southern Railway Company, I will ask you whether the Georgia, Southern & Florida Railway Company and the Southern Railway are carriers under common control or management, and therefore to be regarded as one line under the Commission's finding in 122 I. C. C. 166?

Mr. Walker: I object to that question.

Mr. Burchmore: This, if the Examiner please, is purely a question of fact as far as I am concerned.

Mr. Walker: You can ask him the fact and not his opinion.

Mr. Burchmore: I know the fact, but he is the witness to justify the rates.

The Commission says that in determining whether hauls are single line or joint lint, carriers under common control or management shall be regarded as one line. I ask the witness now whether he as a witness for the Southern Railway Company, and perhaps for other carriers, wishes the Commission to understand that the Southern Railway and the Georgia, Southern & Florida shall be regarded as one line within that term, or as two lines. May I have an answer?

Exam. Waters: He can state what has been done, and what the tariffs show as a matter of fact, but as to his opinion whether it ought to be or not, I don't know that he is qualified to answer that (Rec., 1853).

Mr. Burchmore: I would just as soon have the statement of the counsel for these two companies, as to what the conclusion of the two companies is, on that matter.

Mr. Walker: They are in the tariffs.

[fol. 528] Mr. Burchmore: That does not answer the question. It is a question of whether they come within the terms of that order of the Commission or not. I would like a statement as to these two companies, either from the witness or counsel.

Exam. Waters: I don't know whether the witness is qualified to answer whether they should be or not. He can tell you whether they are.

The Witness: I told you yesterday, or at least, I referred you yesterday to the finding of the Commission in the Livestock case, and stated that we had followed the finding of the Commission in the Live Stock case in applying the scale on sand, gravel and crushed stone.

Mr. Burchmore: Well, I desire to know whether the Southern Railway Company takes the position that its line with the Georgia, Southern & Florida, is or is not under common control or management and, therefore, to be regarded as one line within the terms of the Commission's findings in I. C. C. 122, page 166?

Mr. Walker: Well, the tariffs already provide for the application of the single line scale. As to my stating what should be done, I am not going to do it, because I don't

know. If there are any facts you want to ask about the operation of the Georgia, Southern & Florida, and the Southern Railway, I have no objection to your asking the question and Mr. Crane answering it, if he can (Rec., 1854).

Mr. Burchmore: Well, whether Mr. Crane knows or not I cannot say, but I ask that counsel for the Southern Railway shall state whether these two companies are under [fol. 529] common control and management.

Mr. Walker: I will have to refer you to the Interstate Commerce Commission for the answer to that question. They decide that, and not counsel.

Mr. Burchmore: Is it your position that they are or are not?

Mr. Walker: I do not know that that question is before the Commission here.

Mr. Burchmore: I ask that the Commission require a reply of the Southern Railway to that question.

Mr. Cotterill: Mr. Examiner, may I respectfully suggest that this is no time for that question, this is no time for the argument of this case.

Exam. Waters: I don't know how they are publishing the rate.

By Exam. Waters:

Q. How do you publish them, Mr. Crane, as two line hauls?

A. The interstate single line scale applies for interline movements between the Southern Railway and the Georgia, Southern & Florida.

Mr. Walker: I think that is all the Commission is interested in in this proceeding.

Exam. Waters: I don't see any use of pursuing it any further. If they have construed it wrong, the thing is to bring the question before the Commission.

Mr. Burchmore: I regard this as a very material fact in the case, but as the fact is refused I will get along without [fol. 530] it.

Mr. Walker: It is not a fact you are asking for, it is a conclusion.

Mr. Burchmore: Well, it is a fact whether they are under common control or not.

Exam. Waters: Well, if it is a fact, and it is disputed, it would have to be determined in the proper manner.

By Mr. Burchmore:

Where the long route in interstate traffic from Chattanooga, Mascot, Birmingham, and Montgomery as shown in my exhibits has met the rate of the shorter interstate route between the same points, it is not done by compulsion of any order of the I. C. C. that I know of (Rec., 1856).

A movement of material from Mascot, Tenn. to Mt. Pleasant, Ga., would be either a single line or a joint line movement over the Southern Railway from point of origin to destination. If the shipments were received by the Southern Railway at Mascot, Tenn. without any routing instructions from the shipper and destined for Mt. Pleasant, Georgia, it would probably move through Knoxville, Cleveland, Cohutta, Atlanta, and Macon.

I do not have in mind the relative distances over the route through the Carolinas compared with the route through Atlanta, and so can't say whether under ordinary practice the Southern would prefer the route I gave down through Knoxville to routing the car northward and eastward through the Asheville-Spartanburg route (Rec., 1857). I can't answer offhand whether the route I suggested through Atlanta is an easier operating route and preferred [fol. 531] under operating instructions to the other route I mentioned.

By Mr. Cotterill:

Q. Did the Interstate Commerce Commission consider the interstate revision effectuated by reason of the decisions in the Consolidated cases here referred to and deal with the extent to which the carriers would be authorized to depart from the terms of section 4?

A. They did.

Q. As to all deviations from the long and short haul ride, is it supposed by the carriers that they have received the sanction of the Interstate Commerce Commission as do so under the permissive clauses of section 4?

A. Yes, sir.

Mr. Burchmore: Mr. Examiner, may I on the record inquire of counsel for the Atlantic Coast Line Railway Company in this case, whether the position of that company as to the common control and management of the Charleston & Western Carolina Railroad, within the terms of the Commission's finding to which I have just called attention in my cross examination of Mr. Crane? (Rec., 1858.)

Mr. Gwathmey: I am not sure that I understand Mr. Burchmore's question, but in any even we would answer it in the same manner in which Mr. Walker answered the previous question. As to the manner in which the mileage scales are actually being applied on movements from points on the Atlantic Coast Line to points on the Charleston & Western Carolina, Mr. Doss can tell you when he goes on the stand (Rec., 1859).

[fol. 532] By Mr. Walker:

All that we ask is that the rates within Georgia be made on the basis of the interstate scale, giving to the application of the scale in Georgia, the same application in Georgia as it is on the interstate traffic.

(Witness excused.)

T. C. Maurer was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

At present I am Commerce Agent of the Seaboard Air Line, and have been connected with that road for the past ten years, and in its Commerce Department for the past four years, and have not previously testified in these proceedings (Rec., 1860).

The importance to the Seaboard Air Line of the sand and gravel and other traffic here involved is clearly illustrated by the following figures which I quote from statistics compiled by our Accounting Department. In the year 1925 the Seaboard Air Line Railway handled about 3,008,169 tons of these materials, approximating 16.8 per cent of the total tonnage.

In 1926 we handled 5,316,575 tons of 25.4 per cent of the total tonnage carried.

In 1927 we handled 5,213,183 tons of these materials or 25.5 per cent of our total tonnage. I am speaking of the System as whole, that, that is, originated and received and handled by the Seaboard Air Line.

In Georgia we have important producing plants at Ogles-
[fol. 533] by, near Elberton, Ga., and at Ladds, three miles south of Cartersville. There is also a plant located at Portland, Ga., which point is in the same vicinity as Ladds. These plants produce crushed stone.

From Columbus and Rockmart, Ga., we have record of some shipments of sand and gravel, and from Altamaha Sand Pit, Ga., south of Savannah, there have also been spasmodic movements of sand and gravel for some time (Rec., 1861).

Outside of Georgia within competing range we have access to the plants in the Birmingham district for slag, also the plants in the vicinity of Montgomery and Ragland, Ala., for gravel and sand. There are two plants located on the Seabord in South Carolina which should be able to ship into Georgia; one of these plants is at Columbia, S. C. and the other at Samlaw, S. C.

Before filing the exhibits showing the movements into Georgia, I would like to file as exhibit 143-B, a statement showing the rates on sand, gravel and crushed stone, and so forth, prescribed by the Interstate Commerce Commission in I. C. C. docket No. 17517, reported in 122 I. C. C. 133, applicable on interstate movements throughout the southeast.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 143-B, Witness Maurer".) (Rec., 1862.)

This statement also shows the rates prescribed by the Georgia Public Service Commission applicable on the same commodities intrastate in Georgia.

I offer as exhibit No. 144-B a statement showing the actual movements of slag, carload, from points in the Birmingham district to Georgia points.

[fol. 534] (The same was thereupon received in evidence, marked "Carriers' Exhibit No. 144-B, Witness Maurer".)

The shipments covered by this statement are those made during the first five months of 1928 for which period it will be seen that we handled 282 cars of slag for destinations in Georgia.

In connection with this exhibit I have shown the distances applying from the various origins to the various destinations and the revenue resulting from the movements. I have also shown the rates and revenues that would result from the application of the Georgia Commission scale for the same distances on the same number of tons.

On page 2 of this exhibit I have shown revenue based on the total number of shipments from each shipping point in the Birmingham district from which we handled slag.

The total revenue on basis of the present interstate rates is shown, also the total revenue on basis of the rates prescribed by the Georgia Commission (Rec., 1863).

In the last column the net result is indicated.

It will be seen that the application of the Georgia Commission's scale for similar hauls on a like amount of freight within the state of Georgia would entail a loss of $617.

Exhibit No. 145-B, which I will now file, is a statement showing the actual movements of sand and gravel, carload, from Alabama producing points to Georgia destinations for a six months period, ending June 30, 1928, the rates and revenues based on actual interstate rates compared with rates and revenues that would result from like hauls intrastate in Georgia based on rates fixed by the Georgia Public Service Commission, and which became effective May 1, [fol. 535] 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 145-B, Witness Maurer".)

This statement shows that the majority of the movement of sand and gravel from Alabama points is from Montgomery. There were shipped from this point during the period covered by this statement, 415 cars, for a total weight of 21.165 tons.

The total revenue from each of the shipping points is shown on page 2 of this statement, on which I have also shown the revenue based on rates prescribed by the Georgia Public Service Commission which would be applied for hauls of similar distances from the Georgia producing points to Georgia destinations (Rec. 1865).

It will be noted that the revenue resulting from the rates prescribed by the Georgia Commission would entail a reduction of $2,511.85, or 7.7 per cent of the revenue which we now receive for like service on interstate shipments.

I offer as exhibit 146-B, a statement showing the actual movement of crushed stone from Highway Spur (Oglesby) Ga., to Georgia destinations for a six months period ending June 30, 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 146-B, Witness Maurer".)

The rates and revenues based on the present rates applicable from this point to points in Georgia are compared with the rates and revenue that would accrue from hauls of similar distances from interstate shipping points to Georgia destinations based on the rates prescribed by the Interstate Commerce Commission in I. C. C. Docket No. [fol. 536] 17517 (Rec., 1865).

If the same movement had been charged on the basis of the interstate scale the results would be as shown in the last column. This statement shows the movement from Highway Spur for both single and joint line hauls. The 499 cars shown in this statement produce a total of 25,499 tons, and based on the present rates, which are those prescribed by the Georgia Public Service Commission and which went into effect May 1, 1928, produce a total revenue of $21.573.

Q. What would have been the difference in revenue to the carriers if the interstate basis had applied on these shipments?

A. The difference would have been $8,012.65, or a percentage difference of 27.05 per cent.

Exhibit No. 147-B is a statement showing the actual movement of crushed stone from Highway Spur (Oglesby), Ga., to Georgia destinations for joint line movement.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 147-B, Witness Maurer.")

I have taken the figures used in this statement from my previous exhibit, therefore I will comment very briefly on the reduction in the revenue from joint haul.

For the total number of cars handled over two or more railroads the rates based on the Georgia Commission order

and at present applied within the state of Georgia produced revenue of $7,848 less than the revenue that would be produced on basis of docket 17517 joint line scale. The revenue produced under the Georgia intrastate rates is 71.32 per cent of that which would result from the appli- [fol. 537] cation of the interstate scale (Rec., 1866). These figures I have just given, indicate that to the extent of the movement shown in these exhibits, the greater loss so far as the Seaboard is concerned is occasioned in connection with the rates for joint haul application.

While the revenue from certain single line hauls is lower than that which the Interstate Commerce Commission prescribed in their docket 17517 scale, the greatest loss is on the application of one scale for both single and joint line hauls.

I have a consolidated statement showing the actual movements of the commodities here involved intrastate in Georgia for a representative period and ask leave to file it as Exhibit 148-B.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 148-B, Witness Maurer":) (Rec., 1867.)

This statement covers a four months period from the 1st of May until the last of August. The period represented in this statement is that for the four months immediately following the application or effective date of the Georgia intrastate rates.

The statement also shows the distance used in computing rates on basis of the Georgia Commission prescribed scale, the rates for the Georgia scale distances, and the revenue resulting from the rates as applied to the actual weight of the shipments.

I have for comparative purposes shown in this exhibit the distances used in computing rates in conjunction with the scale prescribed by the Interstate Commerce Commission and the rates and revenue resulting therefrom. From each individual origin sub-totals are shown, while on page 2 the grand totals are indicated.

[fol. 538] The net result of a comparison between the interstate versus the intrastate revenue illustrates clearly that on basis of the interstate rates as prescribed by the

Interstate Commerce Commission for application throughout the southeast and advocated by that body for intrastate application within the various southern states, including Georgia, would and should earn approximately $7,307.00 more revenue than the carriers receive under the present Georgia scale, and in earning this additional revenue they would not be receiving one cent more than the Interstate Commerce Commission found they were entitled to on interstate traffic involving the same haul and the same service (Rec., 1868).

This exhibit covers road building materials originated at producing points on the Seaboard Air Line.

Exhibit No. 149-B is a statement showing the present rates and revenue on actual movements of slag from Alabama producing points to Georgia destinations compared with rates and revenues resulting from the movement of a like number of tons of crushed stone from Ladds, Ga., for similar distances.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 148-B, Witness Maurer".)

In this exhibit I have shown the total number of tons shipped from the interstate producing points to each destination.

The revenue resulting therefrom is also shown.

In making my comparison with the rates from Ladds, Ga. I have based my figures on the total number of tons shipped for that distance. The rate applicable on basis of the Georgia Commission scale is shown and also the rev-
[fol. 539] enue resulting from the application of the Georgia rate for this distance to the total number of tons shipped from the interstate point (Rec., 1869).

It will be seen that in every instance the revenue which would be earned on basis of the docket 17517 scale is materially decreased by the application of the Georgia Commission scale. The intent of this exhibit was to indicate the manner in which the carriers lose revenue because of the diversion from what would otherwise be an interstate movement to an intrastate movement within the state of Georgia.

Exhibit No. 150-B is a statement similar to that filed as exhibit previously filed, with the exception that the move-

ment shown in this statement is the movement of sand and gravel from Montgomery, Ala., compared with crushed stone from Ladds, Ga., for similar distances.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 150-B, Witness Maurer.") (Rec., 1870).

While the movement from points on the Seaboard Air Line Railway in Georgia to points outside of the state of Georgia is not anything like as great as the movement from interstate points to Georgia points, I have knowledge of actual movements from Ladds, Ga., to points in Alabama, Mississippi and North Carolina.

I wish to file as exhibit No. 151-B a statement showing the points to which there were movements of crushed stone from Ladds for a six months period ending June 30, 1928. There were altogether 52 cars handled to these points during this period.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 151-B, Witness Maurer.")

[fol. 540] I have shown in this statement the rates and distances applicable from Ladds, Ga., to these interstate destinations. For comparative purposes, I have also shown the rates applicable on similar shipments from interstate producing points to Georgia points.

In exhibit No. 152-B, which I now file, I have shown the rates on roadway materials, carload, from Georgia points of production to points where road building is in progress in Georgia, compared with the rates applicable from interstate competing points for similar distance. It can readily be seen from this exhibit the disadvantage the interstate shipper has to surmount in order to bid on an even footing with the Georgia producer (Rec., 1871).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 152-B, Witness Maurer.")

In cases where the distances are practically the same as well as where the distances from Georgia points are somewhat in excess of the distances from the interstate points, it is clearly shown that the Georgia producer has a distinct advantage over his interstate competitor in the matter of freight rates.

While this statement shows only a few points at which roadway building is in effect in Georgia these points have been selected at random, and we have no reason to doubt that a similar showing would be made had we taken any points in Georgia at which construction work requiring the use of the commodities here involved is in progress. I should say that the information shown on this exhibit was worked up for the hearing last August or September which was cancelled (Rec., 1872). At that time we did have ac-
[fol. 541] tual knowledge that road building was in progress or contemplated.

(Witness excused.)

F. A. BURKE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Commerce Agent for the Nashville, Chattanooga, and St. Louis Railway, and have previously testified in this case (Rec., 1873).

I have several exhibits dealing with this particular phase of the case which I desire to offer at this time.

My exhibit 153-B which is a map of the Nashville, Chattanooga & St. Louis Railway—I have shown the principal producing points of sand, gravel, and crushed stone on the Nashville, Chattanooga & St. Louis Railway south of Nashville, Tenn.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 153-B, Witness Burke.")

I want to call particular attention to the location of Chattanooga, Tenn., which is just north of the Georgia-Tennessee State line, and to the location of Graysville, Ga., a crushed stone producing point just south of the Tennessee-Georgia state line.

From Chattanooga into Georgia the interstate scale prescribed by the Commission in I. C. C. docket 17517 is applied.

From Georgia, on crushed stone, the Georgia Commission scale is applied.

There is no transportation condition on our line that [fol. 542] we know of that would justify the charging of lower rates, relatively lower rates from Georgia than from Chattanooga to Georgia destinations (Rec., 1874).

Previous witnesses have filed a statement showing a comparison of rates in cents per ton prescribed by the Interstate Commerce Commission and the Georgia Commission, so I won't duplicate their evidence, but I will offer as my exhibit No. 154-B a statement showing the differences in minimum per car revenue.

The minimum weight prescribed in connection with the interstate scale was 90 per cent of marked capacity of car. Within the state of Georgia the minimum was only 80,000 pounds, so on this exhibit I have taken two cars, first a capacity of 80,000 pounds, and the second of 100,000 pounds capacity, and have shown the differences that would result in the minimum car, using the two scales.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 154-B, Witness Burke.")

My exhibit 155-B shows the rates from Chattanooga, Tenn., to the principal common and junction points in Georgia, contrasted with the scale of the Georgia Commission for the same distance, that is if the Georgia Commission scale was applied from Chattanooga what the difference in the charges would be (Rec., 1875).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 155-B, Witness Burke.")

On this exhibit I have shown the miles both by the short line and by the rate making route.

In my exhibit No. 156-B I have shown the rates from Cumberland, Ala. and Chattanooga, Tenn. to points in Georgia, to which there has been an actual movement of [fol. 543] crushed stone and sand and gravel, and I have compared that with the intrastate rates in Georgia both on a per ton basis and the minimum per car basis.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 156-B, Witness Burke.")

(Witness excused.)

G. E. BOULINEAU was thereupon called as a witness and, being first duly sworn, testified as follows (Rec., 1876):

Direct examination.

By Mr. Gwathmey:

I am Freight Traffic Manager of the Georgia Railroad, Atlanta & West Point R. R. and the Western Railway of Alabama, and have not testified before in this case. I have some figures indicating the importance that my lines of the movement of sand, gravel, crushed stone, and other commodities covered by this investigation. Of these materials for the year 1927, the Georgia Railroad handled a total of 507,753 tons, which was 17.03 per cent of its total tonnage. Of that tonnage handled it originated 387,773 tons, or 76 per cent of the total of that kind of tonnage handled.

The Western Railway of Alabama handled in the year 1927 a total of 714,148 tons, which was 29.99 per cent of its total tonnage. Of this aggregate material which it transported it originated 657,601 tons, or 92 per cent.

The Atlanta & West Point Railroad Company transported during the year 1927 a total of 397,380 tons, which was 20.78 per cent of its total tonnage. It originated of aggregate material 1827 tons, or less than one half of one [fol. 544] per cent of this character of tonnage transported (Rec., 1877). The tonnage of the items covered by this investigation is an important element of the total business handled by my lines. The Georgia Railroad is located entirely in the State of Ga., and so is the Atlanta and West Point R. R. There is a very large tonnage moving interstate from the Montgomery district over the lines of the Western Railway of Alabama and the Atlanta & West Point R. R. I should say probably more than one-half of that handled by the Western Railway of Alabama moves in connection with the A. & W. P. R. R. (Rec., 1878).

I asked the auditor of the Georgia Railroad to prepare some data for me showing the difference in revenue on intrastate sand, gravel, crushed stone, rubble stone and screenings originated at points on the Georgia Railroad for the four months of May, June, July and August, 1928, the charges being assessed at the rates under the Georgia

Commission's basis, and comparatively, charges assessed on the interstate docket 17517 scale.

He gave me a statement showing the rate under the Georgia Commission's basis, and the charges on that basis, and the rate under the docket 17517 scale, and the charges on that basis, and the difference. Except for minor errors, the figures he gave me should be the same as the charges that were actually collected upon the actual movement. I am sure they are within a very small fraction of one per cent (Rec., 1879). For practical purposes he compared the actual charges.

The total tonnage so compared was 100,515½ tons. The revenue under the Georgia Commission's scale was $79,097.54. The total charges on the same tonnage, under the [fol. 545] docket 17517 scale, $89,048.17, or a difference of $9,948.63. However, that included some traffic going to Atlanta, and shown on this statement as destined to points in the Atlanta group which I know go to industries that are in the Atlanta switching limits and, therefore, I have deducted from that $800 in round numbers, making $9,132 net difference. That covers a period of four months, May to August, both inclusive, 1928 (Rec., 1880).

Cross-examination.

By Mr. Watkins:

In addition to the roads I have named for which I am Traffic Manager, I represent several small lines, the Elberton & Eastern, the Washington & Lincolnton, and so forth. Those railroads do not all have common officers; some of the officers are the same. The President of the A. & W. P. is also President of the Western R. R. of Alabama and General Manager of the Georgia R. R. Those roads are not operated altogether in common (Rec., 1881). A number of the officers are the same. The freight traffic department is joint, each road has a separate General Counsel and they have separate accounting heads. I am Freight Traffic Manager of all three lines.

By Mr. Burchmore:

I don't have the necessary information to give you the approximate tonnage of these materials which were hauled over our lines from Montgomery to Atlanta, during the

four months I have named. It was very large. The annual movement was perhaps distorted. I haven't the number of tons now, but during that particular period we han- [fol. 546] dled a great deal of the viaduct material for Atlanta (Rec., 1882). Offhand I can't give you an idea of the approximate number of cars for those four months. I could get it for you.

Mr. Burchmore: We would like to have the number of cars or the number of tons, in whatever way is most convenient.

Mr. Gwathmey: Do I understand a request is made that the Examiner direct that that information be furnished?

Mr. Burchmore: I didn't ask that, I asked him if he would furnish it.

Mr. Gwathmey: Before the witness is asked to do that, I am a little dubious as to whether or not it is a proper thing for a railroad witness to do. We all know that there is a pretty strong competitive situation in this territory, and there are rather rigid limitations against disclosures by railroads of shippers' business.

The Witness: What I understood he desired, Mr. Gwathmey, is the tonnage moving over these lines for these four months, the total of this material.

Mr. Gwathmey: From Montgomery to Atlanta.

The Witness: I would prefer not to give one point to another.

Mr. Burchmore: My goodness, Mr. Examiner, they put in statements of specific numbers of cars from a given point to different definite destinations, they were as definite as you could make them, and they were not asked for by anybody (Rec., 1883).

Mr. Gwathmey: We take our chances on what we have [fol. 547] put in.

Exam. Waters: I don't see any objection to furnishing it if you see fit to do it. I don't know whether counsel wants to insist on it or not.

Mr. Burchmore: Yes, I insist on my request. If it is declined, I will have to deal with it accordingly.

Mr. Gwathmey: I suppose Mr. Burchmore will be willing to state the purpose of his request.

Mr. Burchmore: Not in view of your refusal. We desire to know the tonnage moving from Montgomery to Alabama for all purposes of the case.

Mr. Gwathmey: That does not answer the question, which was, that you state the purpose of the request. That does not answer my question. I want to know the relevancy of the question upon the issues in the case, and the reasons why the information is requested by counsel for the Georgia Commission, and what use he expects to make of it.

Exam. Waters: If you hesitate because you are talking about one point, why not give the total movement from these origins?

Mr. Watkins: Mr. Examiner, may I state another reason why that information is necessary and desirable? The witness has given the conditions which would result were the Georgia rate met by the interstate rate. Figures themselves without percentages mean nothing, it may be a nominal percentage (Rec. 1884).

Mr. Gwathmey: We have no objection, Mr. Examiner, I take it, to showing the total tonnage moving over the West-[fol. 548] ern Railway of Alabama and the Atlanta & West Point to points in Georgia, but when we are asked to select an individual point in Georgia and state the tonnage that moves to that particular point, I fail to see the relevancy of that to this issue.

Mr. Burchmore: The witness has given some figures purporting to show the effect upon these railroads of changes in rates. I desire to have the tonnage over these railroads that he testifies for from Montgomery to Atlanta in order that we may apply to those tonnages the various scales and the present rates, in order to determine what, if any, difference in revenue it would make, and how that compares with the alleged difference in revenue under the rates covered by the tonnages that he has volunteered; and, as to Mr. Gwathmey's objection, I desire to point out that voluntarily on no one's invitation, they have put into this evidence exhibits containing the precise number of cars from precise shipping points to precise destinations, and have used shipping points where only one producer was located, so that their little remark about unlawful disclosures seems to be a technicality, if I may say so (Rec. 1885).

Mr. Walker: What is the number of those exhibits, do you remember?

Mr. Burchmore: Yes, I have them before me.

Mr. Gwathmey: We don't need to waste time discussing that.

Exam. Waters: I don't see why you should pick out one point. If you take the whole of Georgia——

Mr. Burchmore: That is my request. Of course, if it is refused——

[fol. 549] Exam. Waters: For what period?

Mr. Burchmore: The four months mentioned.

The Witness: I object to furnishing specific point to point information, because I carefully refrained from doing that in this record.

By Exam. Waters:

Q. You mean even from Montgomery to all points in Georgia you would rather not?

A. I will furnish from all our shipping points, Montgomery district included, to all points in Georgia.

Q. You have furnished that, or you would be willing to furnish it?

A. I would be willing to furnish it.

Mr. Gwathmey: The very reason we refrained from filing an exhibit which Mr. Boulineau had prepared on this revenue question was that he had it worked up in such a way as to show individual movements to individual destinations, and we preferred not to show that information in this instance (Rec., 1886). Now, it is true that in some of the exhibits which the carriers have filed here some information if that sort has been shown, but I say that we have the right to decide for ourselves. If we want to take a chance on data of that sort, the fact that we file it in one instance does not make it obligatory on us to file it in another.

Exam. Waters: I am not compelling you, I cannot compel you, but I am asking if you are willing to furnish the whole movement from Montgomery to points in Georgia?

Mr. Gwathmey: That is not what they asked for, and I don't know whether that would answer their purpose or not.

[fol. 550] Exam. Waters: Does that satisfy you, Mr. Burchmore?

Mr. Burchmore: I haven't asked for anything excepting the movement from Montgomery to Atlanta over these

roads for which the witness testifies. If anybody offers anything else, I will state my position with reference to it when it is offered (Rec., 1887).

Exam. Waters: The carriers apparently do not want to furnish that. Is that so?

Mr. Gwathmey: Yes, we do not see the relevancy of it, and we don't care to furnish it.

Mr. Burchmore: Then I respectfully request the Examiner to direct them to furnish it.

Exam. Waters: The movement from Montgomery to Atlanta, is that it?

Mr. Burchmore: Yes, over the roads for which Mr. Boulineau is particularly testifying.

Exam. Waters: What is the purpose of it, Mr. Burchmore?

Mr. Burchmore: I have stated the purpose.

Exam. Waters: State it a little more plainly.

Mr. Burchmore: One of the purposes—and I will use it for any other purpose, if it is material and relevant—is to apply to that tonnage the present rates and the rates that would obtain under various scales in evidence in this case, to see the effect, if any, on the revenues of these roads of the application of this scale as against the present rates, and compare those differences with the testimony that he has given as to the alleged effect of certain other rates. The information might prove pertinent for other purposes. [fol. 551] I have not immediately in mind any other purpose, but if so, I would use it, and I ask that they be directed to furnish it for that purpose (Rec., 1888).

Exam. Waters: You have the difference today, don't you, between the rate from Montgomery that applies under the docket 17517 scale, and that which would apply in Georgia for an equal haul, haven's you?

Mr. Burchmore: I know everything that I need to know for the purpose of my inquiry, except the tonnage.

The Witness: I just happened to think, perhaps Mr. Burchmore has in mind the difference between the rate from Montgomery to Atlanta at present published, and the docket 17517 scale. If so, I can explain that.

Mr. Burchmore: I don't want any fact except the tonnage, and I don't care to argue my case now, and I do not ask the Examiner to require anything to be furnished that

the Examiner does not think material and relevant, but I ask an order from the bench requiring this to be furnished, because I think it is material and relevant.

Exam. Waters: I don't quite see how it is material to the decision of this issue. I suppose there is a heavy movement from Montgomery into Georgia, not only to Atlanta, but to all points. How does that help us to determine the issue of discrimination as between the docket 17517 scales and the present Georgia scale? We don't know—if they give the total movement into all these points it seems to me that would give you what you want. I don't feel that I should [fol. 552] attempt to here require picking out any point (Rec., 1889). If they want to give it all from Montgomery to Georgia, I think that would serve the purpose just as well, and if so, they have no objection to doing that.

Mr. Burchmore: It will not serve my purpose. I stand on my request, and I haven't any further facts to contribute to your assistance in ruling on it.

Mr. Watkins: Your Honor will understand that we are joining in Mr. Burchmore's request for this information.

Mr. Gwathmey: I call attention to the fact that the record does not yet show the purpose for which the information is asked.

Exam. Waters: I will not require them to furnish the shipments from Montgomery to the Atlanta district during this period. I do not see how it would add anything to the record under the issues here presented. They have stated their willingness to furnish the whole movement from Montgomery to all points in Georgia, and Mr. Burchmore, as I understand it, says that does not meet with the facts, so I think we might as well stop right where we are.

Mr. Burchmore: I have no further questions of Mr. Boulineau. I wish to note an exception to your ruling (Rec., 1890).

(Witness excused.)

Mr. Gwathmey: Mr. Examiner, I would like to recall Mr. Boulineau. Before interrogating him further, and in reference to the discussion which took place before the recess,

I want to say that the position of these defendants in respect to the information requested by counsel for the other [fol. 553] side is based upon the well known statutory provision which makes it a right as well as the duty of carriers to refrain from disclosing information with respect to the business of shippers.

G. E. Boulineau was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Gwathmey:

The present rate on gravel and sand from Montgomery to Atlanta, Ga., is $1.30 per ton. The docket 17517 scale for 176 miles, which is the distance from Montgomery to Atlanta via the Western of Alabama and the Atlanta & West Point (Rec., 1891), is $1.35; consequently the interstate rate from Montgomery to Atlanta is five cents less than the scale. When that rate was put into effect it was the scale rate, the distance being 175 miles from Montgomery to Atlanta, but on a recalculation of our distances it developed that the mileage was incorrect on both the Atlanta & West Point and the Western of Alabama, and the correct mileage is 176 miles, which would throw it into another group under the docket 17517 scale. We propose to change that rate to $1.35, which will put it on the scale.

Cross-examination.

By Mr. Burchmore:

The tariff making that change has not yet been published.

By Mr. Cotterill:

The official distance at the time from Montgomery to Atlanta, and the distance shown in the original proceeding upon which the I. C. C. constructed docket 17517 scale was 175 miles (Record, 1892).

[fol. 554] Yes, there was an enormous tonnage moving between those particular points then, as now (Rec., 1893). Some months ago certain recalculations were made respecting the distance between those points. The recalculation

was made in our engineering department under the supervision of our Chief Engineer. I told them what distances I wanted and the points I wanted to start and stop (Rec., 1894).

Mr. Cotterill: It is obvious to the counsel in the case on all sides, and has been from the time this affair arose in this supplemental condition, that the Georgia interests, both the official interests and the private interests, have contemplated and still do contemplate predicating a part of their theory of defense in the case upon the very thought that it cannot be said or held that there is undue prejudice as between interstate and intrastate shippers and communities, or for that matter unjust discrimination against interstate commerce under section 13, resulting from a difference between two particular mileage scales. Rather they will say necessarily that the practical question before the Commission, and maybe the courts, is as to the actual charges which are imposed. With that obvious predicate and foundation they then go on to say, of course, that if it be true that as to the interstate traffic, that to that extent at least, it is defensive to any argument or contention of fact and law, that failure to adhere to the scale on state traffic violates either section 3 or section 13. Now, I had supposed that perhaps it would be the choice of opposing counsel that the question would first be raised in terms by [fol. 555] them. My supposition is borne out by the announcement of counsel that one of the witnesses under his control had proposed going into the matter, and I had supposed that perhaps that was the time and place when the question would first arise (Rec., 1895). Now railroad counsel concluded that after the prior discussion as to the disclosure of certain tonnage, that the motive which the Government counsel had in view was to treat of this matter of departure from the interstate scale, and therefore, he recalled his witness to go into the matter to the extent which he did. That necessarily puts me for the time being in the position so far as this witness is concerned of taking advantage of his presence, and whether you call it further direct or cross examination, or not, as this is one of the important issues in the case, I should suppose I am entitled to carry it on to its final point of discussion so far as the

facts may lie with this witness. In view of the statement that the railroad considers that the charge is less than the authorized measure of interstate rates, and that they propose to file a tariff increasing that charge, to that extent, and for the present that puts the gentleman in the position of being adversary, and I should think that I am now engaged in cross examination (Rec., 1896).

We took a point on the track opposite the center of the freight station at Montgomery and so at every station along the line, and finally wound up in Atlanta at a point on the track opposite the center of the freight station. The mileage used by passenger trains was 175 miles. Passenger trains use a different track from the freight trains (Rec., 1898).

[fol. 556] By Mr. Burchmore:

Yes, the passenger fares are constructed on the same basis for single line passenger hauls or tickets as for joint line passenger hauls or tickets.

(Witness excused.)

Ben F. Morris was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

The Witness: I am Assistant to the Freight Traffic Manager of the Louisville & Nashville Railroad with headquarters at Louisville Ky. I testified in the prior hearing of this case in Atlanta and Asheville.

Our position is identical with the position of the major Georgia lines, and in view of our slight mileage in Georgia, we shall rely on the testimony submitted by witness Doss and other witnesses for the major lines, in the hope of avoiding cumulative testimony in this record (Rec., 1899).

I believe that you asked one of the witnesses yesterday the extent to which these scales had been employed in Kentucky and Tennessee. For the Louisville & Nashville Railroad we concluded to adopt the docket 17517 scale throughout car system from the Ohio River to the Gulf, and have made it effective in all of the states on state and interstate traffic, except Louisiana, Mississippi and Georgia. Peti-

tions are pending in Louisiana and Mississippi, and of course the Georgia situation is explained in this record. We made this choice at an estimated cost of from 200,000 [fol. 557] to 212,000 dollars per year loss in revenue over our system believing that uniformity in the rates was that desirable to our interest.

(Witness excused.)

Mr. Gwathmey: That constitutes all the testimony of carrier witnesses, but I would like at this time to call one additional shipper witness (Rec. 1900).

W. A. Todd was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I reside at Augusta, Ga., and am engaged in the gravel business with my plant and shipping point at Steel Creek, S. C., located on the Charleston & Western Carolina, 30 miles east of Augusta, which means approximately 30 miles from the state line. We produce clay gravel for road work and sand gravel for railroad ballast (Rec., 1901).

Our approximate annual tonnage is from 60,000 to 100,000 tons and we have been operating at Steel Creek, since 1918 and prior to that time we operated at Loland, six miles toward Augusta, from Steel Creek. Up until April 1925, a large percentage of our products were shipped to points in Georgia. Since then we haven't shipped anything as our business is altogether into the Carolinas. We don't ship to Georgia now because the Georgia freight rate is against me (Rec., 1902). I mean the rate shippers located in Georgia have to pay is less than mine. When we did ship to Georgia it went generally to the Coastal territories as far down at Quitman, Ga. If the interstate rates from [fol. 558] my shipping point into Georgia were put on an equality with Georgia shippers, mile for mile, it would give me a good big territory, virtually my original territory and I should expect to ship a considerable tonnage then (Rec., 1903).

When this Georgia rate went into effect I had just spent $20,000 opening up additional deposits and for additional machinery and it stopped a fifteen car movement I was shipping on. I was advised by the engineer of the Highway Department to discontinue shipments, and that was April 1, 1925. I have bid continually since then but have not shipped any. We have to ship into Georgia over a joint line movement although the Atlantic Coast Line and Charleston and Western Carolina is a one line movement, but any other line is a joint line movement. Most of my tonnage now goes to Bufort County, Charleston County, Jasper County, Hampton and Allendale County, all in the coastal territory in South Carolina (Rec., 1904).

The average length of my hauls at the present time is between 125 to 150 miles.

(Witness excused.)

R. J. Doss was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Cross-examination.

By Mr. Burchmore:

Mr. Doss, can you state as a witness for and official of the Atlantic Coast Line Railroad Company, whether the Atlantic Coast Line Railroad and the Charleston & Western Carolina Railroad, are under common control of management, and to be regarded as one line, therefore? I am [fol. 559] using the language on page 166 of 122 I. C. C.

Mr. Gwathmey: The question is objected to (Rec., 1906).

Exam. Waters: You can ask him how the rates are published today, but I don't see that this witness is qualified to answer those questions. If he knows and wants to answer, he may do so, but if it is objected to I think I shall have to sustain the objection. Do you object?

Mr. Gwathmey: I do, in that form. Furthermore, I would like to know the purpose of it.

Mr. Burchmore: I desire to know the effect, if any, of the Commission's order in 122 I. C. C. 133, upon these two roads and their interstate transportation.

Mr. Gwathmey: We have no objection at all to giving the application of the rates, Mr. Examiner.

Mr. Burchmore: I dislike very much being put in the position of either having to appear unpleasant or of framing my questions to suit counsel. I framed my question the way I wanted it.

Exam. Waters: You ask him to give his opinion, as I understand it, whether it should be or should not be so operated.

Mr. Burchmore: That is not the question, it was diffently worded.

Mr. Gwathmey: The objection is that he asks the witness to state a conclusion of law, you might say, at least a conclusion instead of asking him to give the facts upon [fol. 560] which the Commission itself might draw its own conclusion (Rec., 1907).

Exam. Waters: I sustain the objection.

Mr. Burchmore: I note an exception.

Exam. Waters: You can ask him how they are published today in the tariffs, how the rates are published, whether joint line or single line. If you are asking him for an opinion, as I understood you are, whether it should or should not be so operated, I do not know that he is qualified to answer, and Mr. Gwathmey objects to the form of your question, so I will have to sustain the objection.

Mr. Burchmore: The objection is sustained to the question as asked, or in the form as restated?

Exam. Waters: You can ask it again.

By Mr. Burchmore:

Q. Are the Charleston & Western Carolina Railway Company and the Atlantic Coast Line Railroad Company carriers under common control or management?

Mr. Gwathmey: We object to that.

Exam. Waters: Objection sustained. There are joint through rates published and in effect from stations on the line of Charleston & Western Carolina in South Carolina, to stations on the Atlantic Coast Line in Georgia. They are intended to be the full measure of the docket 17517 scale socalled for joint line hauls of the distance between the points in question (Rec., 1908).

The only order under which we were required to revise or publish rates from Charleston & Western Carolina sand and gravel pits to Coast Line stations in South Georgia is the report and order in docket I. C. C. 17517, 122 I. C. C. 133.

Prior to that time we had through rates from these pits [fol. 561] to our South Georgia stations, and going back some years, those rates were published at so much per cubic yard, and they were upon a very low basis. We finally concluded to revise the rates, and we published tariffs carrying that revision. The rates that were then published were in most cases increases, and upon complaint those increases were sustained by the Interstate Commerce Commission and finally in 83 I. C. C. 436, the rates which we had then published or had theretofore published were approved and became effective. Now, the Commission's report in that proceeding very fully, as I recall, sets out the rates formerly in effect by the Charleston & Western Carolina and those then under discussion, and which were permitted to become effective. These are the rates which were in effect at the time of the order in Docket 17517 (Rec., 1909). Now, those rates that were then in effect, I mean prior to the order in docket 17517, and which were approved in the I. & S. proceeding to which I have just referred, were determined by using the carriers' proposed scale less 10 per cent, submitted to the Georgia Commission in 1921, under the circumstances which have been very fully described in this record, and we used the single line rather than the joint line scale for determining those figures. We did that not alone because of the connection between the Atlantic Coast Line and the Charleston & Western Carolina, but because we felt that that was as high as we could fairly go in that revision in view of the rates from competing points such as Montgomery and elsewhere on these materials.

Q. I think perhaps your answer indicates a misunder- [fol. 562] standing of the purpose of my question, and I am not sure that you have answered it definitely. I will reframe it, and assure you that I have no thought or suggestion that either of these railroads has at any time violated any section of the interstate commerce act, unless it be a violation of section 1, or any order of the Interstate

Commerce Commission in respect to this matter, and I want you to say whether once upon a time or formerly rates were published from Charleston & Western Carolina stations in South Carolina to the Atlantic Coast Line in Georgia on what you regarded as a single line basis, and now they are published on what you regard as a joint basis?

A. I have just said as carefully and as fully as I could that the rates which were in effect from Charleston & Western Carolina sand and gravel pits prior to the revision made in docket 17517, were determined using as a basis the single line scale which the carriers submitted to the Georgia Commission, but it was not applied literally. For one thing, we averaged the distance from the Charleston & Western Carolina pits, and published one rate from all pits. In other words, it was just sort of a level to which we were trying to bring these rates, they previously having been upon a very much lower basis. In that revision we were not bound by any order, and we were making very substantial increases in the rates, and that was just as far as we felt we could go under the circumstances.

I have not received any definite instructions from my superior officers as to the treatment of the two roads under [fol. 563] one management or control (Rec., 1911).

We understand and have always applied interstate from Charleston & Western Carolina points to Coast Line points the joint line scales where we were being required to revise the rates on a scale basis. When we came to apply the docket 17517 scale we had no hesitancy at all, and did not understand that we were supposed to do anything else other than apply the joint line scale from Charleston & Western Carolina to Coast Line points.

I know of no change in rates on or about May 1, 1928, from Charleston & Western Carolina stations to points in Georgia on these materials (Rec., 1912).

By Mr. Gwathmey:

There has been no change in the rate from Ellenton, S. C., to Savannah, Ga., so far as I know or can find since the rates were revised October 1, 1927 to comply with docket 17517.

I would like to be permitted to note some corrections on my exhibit 100-B. We have very carefully rechecked that exhibit and we find one or two errors which probably should be corrected.

On sheet 4, from Ellenton, S. C., the first station in the third group, the rate shown as $1.15 should be $1.05, and the docket 17517 rate in the next column should be $1.05.

On page 5, to Macon, from Pacolet, next to the last station, the docket 17517, rate in the second column of figures should be $1.70 instead of $1.60.

On sheet 9, Birmingham, Ala., the middle station in the second group, the 17517 rate should be $1.75 instead of $1.70.

On page 10, Montgomery, Ala., in the fourth group, the [fol. 564] rate should be $1.50 instead of $1.60 (Rec., 1913).

Sheet 13, to Albany, Ga., Montgomery, Ala., the distance should be S 164 instead of S 149.

I want to cut out sheet 14, because it is almost completely erroneous, in that the point is located on a short line, and we overlooked the arbitraries, so you can just cut that out entirely.

Mr. Burchmore: I don't think it should be cut out. It is a point which we think somewhat important. The rates are correctly set forth, are they not?

The Witness: I understand they are not.

Mr. Burchmore: But the docket 17517 rates are wrong?

The Witness: I can have it completely rechecked. I just noticed that they failed to add the short line arbitraries.

Exam. Waters: Do you want it corrected, Mr. Burchmore?

Mr. Burchmore: Of course, I don't want anything erroneous but I think page 14 is informative because it contains a long list of rates that are permitted under docket 17517.

Exam. Waters: You will correct it and resubmit it?

The Witness: Yes sir (Rec., 1914).

Sheet 20, Columbia, S. C., to Tifton, Ga., the first station in the third group, thed ocket 17517, rate for the distance shown is $1.75 instead of $1.70.

Sheet 29, Stillmore, Ga., from Ellenton, S. C., the rate and the docket 17517 rate should be $1.25 instead of $1.35.

On that same sheet, Dixiana, S. C., both the rate and the docket 17517 rate should be $1.40 instead of $1.45.

Sheet 32, Montgomery, Ala., about the middle of the [fol. 565] second group, the rate and the scale should be $1.60 instead of $1.70.

Sheet 36, Beverly, S. C., the first station, the rate should be $1.60 instead of $1.50.

Sheet 38, Columbia to Thomasville, Ga., the rate is $1.90 instead of $1.80.

Sheet 42, opposite Birmingham, the docket 17517 rate should be $1.40 instead of $1.30, and the distance should be corrected by cutting off the S indicating that it is a single line haul. It is a joint line haul (Rec., 1915).

Sheet 43, Montgomery, Ala., about midway of the page, the docket 17517 rate is shown as $1.30 and it should be $1.35.

Sheet 45, Montgomery, Ala., the first station in next to the last group, the distance is shown S 261 and should be S 315.

Sheet 46, Montgomery, Ala., the first station in the last group, the docket 17517 rate is $1.30 instead of $1.35.

Most of these changes represent just clerical errors in compiling the statement, and in compiling the tariff. Some of them represent errors in compiling the tariff.

By Mr. Burchmore:

Yes, my exhibits were made up by taking from the Glenn tariffs these specific interstate rates and showing them as the present rates on my exhibits where specific rates are published from point to point. They are so published wherever there was a known movement (Rec., 1916). In most cases on my exhibit the rates are published as specific point to point rates.

(Witness excused.)

[fol. 566] T. O. Maurer was thereupon recalled as a witness and being first duly sworn, testified further as follows:

Cross-examination.

By Mr. Burchmore:

My exhibit 144-B shows a distance of 222 miles from Ensley, Ala., to Gainesville, Ga., which distance was figured by

route 3 over the Southern Railway direct. The one car which I said the shipper at Ensley shipped to Gainesville, moved over the Seaboard Air Line in connection with our line (Rec., 1917). That route would be Seaboard Air Line through Rockmart and Atlanta and then across to Winder or Athens and from the latter point over to Gainesville Midland R.R. I can't say whether the distance would be substantially greater than 222 miles. Referring to the one car from Alabama City, Ala., to Blue Ridge, Ga., 199 miles, Route 11, Southern Railway, Western Atlantic and L. & N., is the short route but not necessarily the route for which the rate was made (Rec., 1918). I cannot say how the docket 17517 scale rate from Alabama City to Blue Ridge would be made nor over what route, using the shortest rail distance over which a car could move without transfer of lading, I would need the tariffs containing the rates before me. That one car did move over the Seaboard Air Line from Alabama City to Blue Ridge, and we would probably handle that through Atlanta. Without the tariff before me to check the mileage I cannot say whether the distance would be substantially more than 199 miles.

(Witness excused.) (Rec. 1919.)

[fol. 567] J. A. Streyer was thereupon called as a witness and being first duly sworn, testified as follows:

Direct examination:

Mr. Cotterill: If your Honor pleases, we would like to state an anticipatory objection. We are all personally tremendously devoted to the gentleman on the stand, but at the same time we have to avail ourselves of important objections. The witness has a disposition to embrace within his presentation things that are not testimony as to facts. I say that respectfully. I mean he is disposed to argue his case instead of waiting until the argument comes (Rec., 1922). By way of anticipatory objection right now, we take the position at this hearing that the parties who go under oath and occupy the witness stand must be confined strictly to testimony of facts. Anything that partakes of argument or statement of position, as counsel has another time and place.

Exam. Waters: I think that is a good rule to observe.

Mr. Burchmore: I want to say for the Public Service Commission of Georga that if Mr. Streyer does not cover certain matters that we think should be in this record, I shall ask that he be required to testify as a witness called by us in this proceeding now or later as you may designate. It is my purpose to call him as a witness if he does not go into these matters.

Exam. Waters: All right, go ahead.

The Witness: The original petition dated Washington, June 5, 1925, had the following names of railroads as petitioners, members of our association.

By Exam. Waters:

Q. That shows on its face?

A. Yes, sir. I desire at this time to withdraw them.

[fol. 568] Q. Who—are you going to name them?

A. Yes, sir. Green County Railroad——.

Mr. Cotterill: This is not testimony. He can withdraw them by written declaration to the Commission, in argument, on his brief, or any other way, but it is not testimony (Rec., 1924).

Exam. Waters. He is making a request now, I see no particular objection to that. It is the attitude that he wants to take at this time.

Mr. Cotterill: I am not objecting to his attitude. I am objecting to his using the position of a witness to go into something that is not testimony.

Exam. Waters: Well, it is a good time to get it in the record, I suppose.

The Witness: The Georgia Northern Railway, Flint River & Northeastern Railroad; Georgia, Ashburn, Sylvester, & Camilla Railway.

Now Mr. Examiner, those railroads were in the original petition. There are some others that are left there that are in favor of these proceedings, but as all railroads within the state of Georgia were put into this proceeding, 22 of those railroads are here supporting the Georgia scale, that is primarily supporting a single line scale, for the reason that——

Mr. Cotterill: If your Honor please, I now object on the ground that there is no such issue before the Interstate Commerce Commission, and what the witness is saying is wholly irrelevant to any matter in issue, and if there is any [fol. 569] disposition to doubt that, I would like the privilege of argument, and perhaps extended argument (Rec., 1924).

Mr. Burchmore: May I reply, if there is any technical question of its materiality I ask that it be waived, and that in fairness the witness be permitted to answer.

Mr. Cotterill: There is no rule of fairness other than the rule of law as to evidence. That is fundamental in this case. If there is a disposition to assert in this proceeding that the matter the witness wants to go into is relevant and germane, we might as well face it now. It has to be faced sometime. It is our deliberate intention to urge your Honor to rule the exclusion of that evidence or anything like that.

Mr. Burchmore: It if is an important question in the case I question how it can be immaterial. I think it is an important question in the case, and, therefore, I was responding to Mr. Cotterill's objection.

Mr. Walker: I join in the objection to that. The question here is whether these rates are discriminatory, and not whether one party supports one scale or another scale.

Exam. Waters: I am going to rule on this. Do you want to make an argument before the ruling?

Mr. Cotterill: May I consult with another counsel?

Mr. Burchmore: You asked be to be brief, and I am going to be darned brief from now on.

Exam. Waters: I asked you all to be as brief as possible in your argument. If you take that personally you are very much mistaken. I addressed it to all of you (Rec., 1925).

[fol. 570] Mr. Cotterill: At this point, your Honor, we do not care to add anything.

Exam. Waters: I will permit the witness to go ahead.

The Witness: Those 22 railroads are supporting a scale for single line and joint line application.

Mr. Walker: Both inter and intrastate?

A. Yes, sir.

Mr. Walker: I object to testimony of this character. That question is certainly not before the Commission here.

Mr. Gwathmey: I join in that objection and call attention to the language of the order reopening the proceeding, which is very specific.

Mr. Watkins: The gentlemen will notice that interstate came in there by the question of Mr. Walker.

The Witness: All right, I will eliminate interstate and put it intrastate, for the reason that the short-lines have little or no local territory, and that practically all of their business moves as joint traffic, and they are required to carry differentials higher than the single line scales when they have very little if any traffic moving single line, and they are in competition with traffic moving over single lines for single line haul. Now, that is my reason for withdrawing them, and we are here saying that we do not believe there is any real discrimination as between the rates on these carriers—— (Rec., 1926).

Mr. Cotterill: I object, Mr. Examiner, on the ground that the witness is simply stating a bald conclusion.

Exam. Waters: Let him go ahead.

[fol. 571] The Witness: All right—as between rates as prescribed by the Georgia Commission for application by these carriers as against the interstate rates.

Exam. Waters: Is there any cross examination?

Mr. Cotterill: Your Honor, without wishing at this time to argue it, but to maintain a position of consistency, and the argument will come at another stage of the case, I respectfully move to strike the explanation that the witness has given, and will leave it undiscussed for the present. Later on in connection with objections that will arise to certain other testimony, I will renew the motion to strike, and then will engage in argument on it.

Exam. Waters: The objection is noted.

Mr. Gwathmey: We would like to ask a question.

Cross-examination.

By Mr. Gwathmey:

Q. Mr. Streyer, did you receive specific authority from each and every short line which you have named, to withdraw them from this proceeding?

A. I did, and may I add the reason why?

Q. You certainly may as far as I am concerned (Rec., 1927).

A. For the reason that they found that on joint line traffic they lost tonnage on account of cross country competition and otherwise. We have made an effort to get some of the Trunk Lines on special movements on interstate traffic to join in single line scale business in competition with pits or industries located in approximately the same territory, the same distance, and sometimes the distance was shorter from the short line point of origin to desti- [fol. 572] nation than from an origin upon the Trunk Line where the single line haul was involved. That is our reason.

I might further add to this, Mr. Gwathmey, it was not permission, I got the instructions to withdraw. If conditions and the location of a short line are such that we can apply the differentials, we do, within our discretion. We have recently taken the arbitrary off of two railroads on account of not being able to carry the arbitrary and compete with the Trunk Line across country. On some of the short lines today on intrastate traffic we do apply the arbitrary (Rec., 1928). Some traffic is moving under rates which take the arbitrary. It is also true that with some of our interstate traffic the arbitrary is added from points on a short line to interstate destinations, but we have instances where the interstate traffic has fallen off on one short line; where the total tonnage of sand and gravel since these rates became effective have fallen off 80 per cent from the short line, but not within this state. We are applying the joint line scale on such traffic. I would not say that we are generally applying the interstate arbitrary, because most of the important lines within Georgia and North Carolina, and South Carolina, have taken off the arbitrary because of competition. They could not carry it (Rec., 1929).

In the last two weeks on the Wadleigh Southern and the Wrightsville and Tennille Railroad we took the arbitrary off on traffic moving to a point on a short line. Those are not rare occasions. In Georgia there are 7 out of 22 rail- [fol. 573] roads that don't carry the arbitrary in Georgia to destinations. Yes, sir, I am talking about the Georgia arbitrary or the interstate arbitrary. We take off both. In the case of a local interstate shipment where competi-

tion is not involved, we carry the single line scale interstate as prescribed by the Commission without the arbitrary. When we have a competitive reason to do so we have taken this arbitrary off a great deal (Rec., 1930). When we do not have those competitive reasons if we take it off of a short line, we take it off to be consistent, both single and joint line, interstate. In other words, we do not feel we could be in very good graces of the Commission by removing it from joint line traffic and charging the man that has a single line haul an arbitrary. If we remove it from a railroad it is removed entirely, both intra and interstate.

It is true that on a short line railroad I represent here, that in Georgia and South Carolina they are charging on sand, gravel and crushed stone in connection with the Trunk Lines they join rates that do not contain the 25 cent arbitrary referred to in the docket 17517 decision. I didn't say that that applied to Alabama. I am not sure of that but in North and South Carolina and Georgia it is true.

Mr. Cotterill: If your Honor please, I again renew the motion to strike out the testimony, and will argue it later. Subject to that motion I would like to indulge in a brief examination of the witness (Rec. 1931).

By Mr. Watkins:

I don't think any of the short lines meet the truck or [fol. 574] wagon competition at any points on these commodities. Yes we now have some cross country competition, at Oakfield, Ga., on the Georgia and Florida R. R., we have it to Lyons, where he can get the benefit of the single line mileage scale on gravel from Mitylene, Ala. Ordinarily we would get that movement. We are right in the center of the work being done, and only by making certain inducements we did get it.

By Mr. Cotterill:

Yes, there are five railroads on behalf of whom I took exactly an opposite position (Rec. 1932).

The Macon, Dublin & Savannah Railroad, and the Savannah and Statesboro Railroad, are in favor of joint line rates, because their vice president has always been and is

today absolutely opposed to one scale of rates applying both joint and single line.

As to the Elberton & Eastern, I presume—they have not given me the reasons, so I cannot presume.

As to the Washington & Lincolnton Railroad, the management I presume is the same as the Elberton & Eastern.

The Tallulah Falls Railroad, I have received no instructions from them to withdraw them. I don't know of any reason why they are not in favor of the joint line scale.

The Chattahoochee Valley Railroad has one mile in Georgia.

As to the Tallulah Falls Railroad, I should think that either a single or joint line scale—in fact if I was representing that road, it makes very little difference, as they have no cross country competition, and have a territory [fol. 575]-all by themselves.

I am saying this to the Commission that we favor the single line scale and by "we" I mean the 22 line-(Rec. 1934). I am not asking the lines I represent to treat differently interstate and intrastate rate commerce respecting the charging or not charging a joint line scale, and there are 24 railroads that do not allege that the difference between Georgia and the interstate rates are a violation of law. I am not trying to justify at all, and am simply stating to the Commission the position of those lines. I don't know of an actual movement to or from any of these railroads, and unless there is a movement there cannot be undue prejudice (Rec. 1935). I mean of course, that there is nothing moving on those rates from those railroads. There has been intrastate traffic but not interstate traffic. I am aware of no interstate movement of sand and gravel from Montgomery, Ala. to any short line in Ga. represented by me in this proceeding. My sources of information is general of course. I haven't a recent record of it, but I did have several months ago.

Q. If it be assumed that an unequal treatment of inter and intrastate commerce is the reason why there is no interstate movement, do you or do you not undertake to defend that difference in treatment?

Mr. Watkins: I object, if your Honor please, to any such assumption, as there is no evidence to sustain that assumption.

Exam. Waters: Read the question, please.

(Question as above recorded, was repeated by the reporter) (Rec. 1936).

[fol. 576] Exam. Waters: I see no objection to the question.

Mr. Burchmore: Will you pass on the objection, Mr. Examiner?

Exam. Waters: I will let him answer. Is there any exception?

Mr. Watkins: Yes. I did not know an exception in this court was necessary, but I except every time you rule against me.

Exam. Waters: It is not neccessary, perhaps.

The Witness: Assuming that there was a movement?

By Mr. Cotterill:

Q. The question was just exactly the opposite. The question was, assuming that the reason why there was no movement was the difference in treatment of interstate and intrastate commerce, do you or do you not in that event undertake to justify the discrimination?

A. Well, I don't know, Mr. Cotterill. My frank opinion is that there is very little discrimination between the two. As to the Georgia rates there is not enough difference to control very much of the business when it comes to actual interstate and intrastate and when I speak of the difference I mean the difference between 17517 single line scale and the Georgia Commission single line scale (Rec., 1937).

I have named the lines I represent and have stated in the record those that favor the joint line traffic. Personally I am in favor of one scale of rates so I am not seeking to justify that.

Q. I am asking you, do you or do you not undertake in [fol. 577] the case of any railroad which you here represent to justify the charging by it of the docket 17517 joint line scale on interstate traffic, and contemporaneously charging the Georgia scale on state traffic?

A. Why, sure I was doing that, for the reason that I have got to do it under the law. I have got to charge the docket 17517 scale on interstate traffic, and on intrastate traffic I have got to charge the scale of the Georgia Commission (Record, 1938).

By Mr. Burchmore:

Mr. C. R. Catts is Vice-President of the Macon, Dublin, & Savannah, R. R. and he is also Vice-President and Traffic Executive of the Seaboard Air Line, as well as Vice-President of the Savannah & Statesboro R. R., one of our short lines (Rec., 1939).

My position is exactly as you state. I tried to make that plain at the start, and that the discrimination against the short line railroad is based upon the fact that the application of the joint line scale from points on the short line will curtail the movement of these commodities from that point, and not that the two scales will result in undue discrimination. The short lines in Georgia upon which crushed stone originates are the Gainesville and Northwestern R. R.; the Georgia & Florida, R. R., and the Macon, Dublin & Savannah have a limited amount of sand and gravel, as also due one or two of the South Georgia lines, and of the total number of lines, I represent about five of them originate these commodities in Georgia.

By Mr. Webster:

I should say that all of the lines terminate these com- [fol. 578] modities, and by that I mean there are a good many shipments destined to points on those lines (Rec., 1940). Very little of it, if any, is handled in connection with through traffic in passing over their rails.

By Mr. Gwathmey:

I will repeat which of those five lines are the ones I have withdrawn from the petition; I withdrew the Georgia & Florida, and have authority from them, a letter on file; I didn't name the Georgia and Florida in the original petition. By petition you mean withdrawn from the case. All right, the Georgia & Florida was withdrawn from the second petition; it originates tonnage of sand, gravel, and crushed stone (Rec., 1941). The Gainesville & Northwestern is another one. It originates tonnage. The Wrightsville and Temmille was withdrawn; it operates a sand pit and ships an occasional car; the Sherwood R. R. ships an occasional car and was withdrawn.

By Exam. Waters:

Q. When you speak of withdrawing from the petition, do you mean the recent petition, which brought about this

hearing and because you put all the railroads in it. There are 22 withdrawing, and I have not named those. I have named those that were sticking and all the rest are out (Rec., 1942).

By Mr. Gwathmey:

Yes, some of these commodities originate on the short lines for which I have not attempted to withdraw the petition, and I said the Macon, Dublin & Savannah was one with a limited amount. There aren't any others. Yes, it [fol. 579] is my position that the joint line differential as well as the arbitrary, should be eliminated from the rates on sand and gravel destined to all points on the short lines in Georgia. I say one scale of rates should apply over all lines for both single and joint line application; as to the short lines, that they be allowed the arbitrary as has been customary, both on interstate and intrastate traffic. We want the arbitrary if we care to take it, and the privilege of abandoning it if we like. And where we abandon the arbitrary we don't expect the Trunk Lines to make up the losses in division; it does not affect their revenue in the slightest (Rec., 1943).

By Exam. Waters:

Certainly I still believe in the theory of arbitraries for special treatment but I don't believe in differentials between the joint and the single line scales. I should say that of the traffic on which we are abandoning the arbitrary today after it is authorized is about 80 per cent on this sand and gravel (Rec., 1944).

Exactly, under the decision in docket 17517 our short or weak lines should be permitted if they chose to take advantage of it and add to the scale rates an arbitrary of 25 cents per ton and we would like to be allowed to continue to take it or not to take it as we choose, interstate as well as intrastate. Since we removed the arbitrary from the last two railroads, the Wrightsville and Tennille and the Wadleigh Southern, I think 80 per cent of the traffic in those commodities in Georgia on the short lines moves without the arbitrary (Record, 1945).

[fol. 580] Not a pound of traffic in these commodities originates in the two roads last mentioned except for an

occasional car over the Wrightsville & Tennille. My estimate of 80 per cent is based on my full knowledge of the roads, the traffic they handle, and that the bulk of the traffic of sand and gravel is moving to those lines that do not carry the arbitrary. Most of these commodities originate in Georgia on the Georgia & Florida and the Gainesville & Northwestern (Rec., 1946).

Intrastate traffic from points on the Gainesville and Northwestern takes the arbitrary today. I think 60 per cent of the tonnage in Georgia originates on the Gainesville and Northwestern and we apply the arbit-ary on that, and I might add that there is a difference in the class of stone. I think very little sand and gravel originates on the Gainesville & Northwestern (Rec., 1947).

(Witness excused.)

J. H. Brown was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I have been in the sand business for twenty years, residing at Howard, Georgia, and shipped from Junction City to Atlanta. Howard is four miles from Junction City (Rec., 1948).

I am not familiar with the subject but think the rates from Howard, Junction City, and Gaillard have been [fol. 581] grouped generally. From time to time the rates have been increased. We have two grades of sand selling one at 15 cents a ton and the other at 35 cents, with our principal market at Atlanta, shipping probably 80 per cent there. Our principal competition in Atlanta comes from Gaillard and Roberta, down the Southern Railway route. I don't think our margin of profit would permit additional charges on transportation. I think it would put me out of business (Rec., 1949).

Q. Are you in favor of the single line rate in Georgia that is now in force?

Mr. Cotterill: If your Honor please, I must respectfully object, and in that connection it will be recalled that as to

the preceding witness it was decided by counsel not to ask you then to entertain argument on the question, but we seem to have reached the point where it might just as well be approached and gone into as fully as it requires either on or off the record.

Exam. Waters: Well, I guess if it is going to be argument, we had better have it on the record.

Mr. Watkins: I don't care anything about arguing it. I think it is a competent question, and I am insisting on it, and am ready to have the Examiner rule on it.

Mr. Cotterill: The question is one that does require a ruling, and we might as well reach it now. It controls the future of the case anyhow.

Exam. Waters: My point is whether either side would care to argue it.

[fol. 582] Mr. Cotterill: I would like to.

Mr. Watkins: I don't care to argue it. It seems to me the best way would be to put it in and let the argument come later.

Mr. Walker: It seems to me, Mr. Examiner, whether he is in favor of a single line or joint line scale is immaterial in this case (Rec., 1950).

Mr. Burchmore: I do not desire to argue, but I would like to have the objection stated. It may have been stated and I didn't hear it.

Exam. Waters: It has not been stated.

Mr. Cotterill: If your Honor please, it will be recalled as indicated in the opening announcement, that this is a proceeding which has been under way for some length of time, and as to which the Commission has reopened the record to receive additional facts. I will not speak at length on the matters which have thus far been decided, and with apparent finality, other than to say that subject, I presume, to any corrective evidence which might cause the Commission to change its conclusion, it has thus far been decided what is the proper standard of charge to which rates shall be made to conform.

In addition to that, it has been decided that there are substantially similar circumstances and conditions within the scope of section 3 of the act as between state and interstate traffic in Georgia.

[fol. 583] Now, this Commission for reasons not necessary to go into, has reopened the proceedings, but in that con-

nection it was very particular, in the order assigning the cases for rehearing, to warn everybody that it was doing so solely with respect to the question of the violation of sections 3 and 13 (Rec., 1951).

Secondly, at the opening of the case, counsel for opposing interests accepted your construction of the hearing by their declaration that they would rely upon a jurisdictional contention, that as thus limited the Commission was without power to make a valid order.

Thirdly——

Mr. Watkins: Permit me to interrupt you. I want to disclaim that I limited my claim to non-jurisdiction.

Mr. Cotteril: Oh, I know you did not. I think it was apparent that there were perhaps additional elements of law involved in the conclusion of you gentlemen. At any rate, the counsel for the Public Service Commission used these words, he said that as limited by the Commission. He took the position that the Commission would be without power to make a valid order.

Thirdly, it would be, I venture to say, overwhelming in its immediate practical commercial consequences if the Commission should take any different position than it has with respect to the scope of this hearing. There is no pro- [fol. 584] ceeding now before the Commission dealing with interstate rates as such, it is not as if the cases in their entirety had been reopened.

Counsel for some of the parties here, the distinguished Mr. Watkins, has previously presented to the Commission a formal petition seeking from the Commission an opportunity (Rec., 1952) to reopen the cases in their entirety to sufficiently serve to enable re-examination of the question whether there should or should not be a difference between single and joint line rates, and the Commission denied that request. Every other party to the case has been quite naturally put in a position where it never once occurred to them as remotely possible that in this late day would it now be attempted to go outside of the scope of the cases as defined by the case, as defined by the Commission assigning it for further hearing, as defined by the Commission in their attitude in declining to open it for general examination; and I most respectfully say to your Honor that for the Commission now to permit evidence on that question would be simply to reverse the entire record that appar-

ently so far has been made as controlling the scope of this hearing. Certainly my clients never supposed that there was any pending case in which they would be called upon to justify the conclusions already reached by the Commission. The only questions here is, are sections 3 and 13 being violated as a result of the differences between the [fol. 585] rates that are being charged in Georgia and those that are being charged on interstate traffic (Rec., 1953).

Mr. Gwathmey: Mr. Examiner, I merely desire to interpose the same objection on behalf of the lines that I represent. I do not think it is necessary for me to repeat the reasons, but I do want to call particular attention to the language of the order of June 4, 1928 reopening this proceeding. The point is that this hearing is not the time the proper time, as I see it, to discuss these questions. They can only properly come up in the event that the Commission should reopen docket 17517 in its entirety, and upon the general question as to what interstate scale or scales would be proper for the future.

Mr. Burchmore: Mr. Examiner, I have no argument to make, I simply wanted to remark that Mr. Cotterill has incorrectly stated my position and my views, and I do not wish to be understood as concurring in anything that he said from beginning to end. I reserve the right to concur in any part of it that upon inspection appears to be right; but I want to ask if he can state in one or two words what is the objection to the question, not an argument of it, but what is the objection to the question? Is it that it is leading or immaterial, or irrelevant or incompetent, or what?

Mr. Cotterill: However, to meet the objection that we must state our ground of objection, I will say that the argument I have made is in support of (Rec., 1954) the objection that the question is immaterial to any question now [fol. 586] before the Commission.

Exam. Waters: As the question stands, I see no objection to it.

Mr. Cotterill: I am sure your Honor appreciates the point of the argument at least. If your ruling on it goes only to the point that the argument is not appropriate to the particular question, I venture to respectfully say that I did not discuss that in my argument, because I took it for granted in my own mind that the question meant this: Does

the witness favor the avoidance of a difference between single and joint line rates on this commodity? Assuming that the question meant that, and nothing else, it goes to a matter not involved in the proceeding, because whether he favors it or not is not something here under inquiry. Suppose he does not favor it, suppose he does favor it, we say there is nothing to be decided in this case responsive to that evidence. It reopens a question that is not now assigned for hearing.

Exam. Waters: I am inclined to agree with the contention of Mr. Cotterill, interpreting the order strictly. On the (Rec., 1955) other hand—and you gentlemen will of course have the right to take exception to my ruling, I am going to let this evidence in, not that I believe that the Commission could act upon this evidence without going further into the matter, if it was so inclined, have another hearing if it became necessary. I certainly do not think that under this order we can here undertake any more than the order [fol. 587] sets forth. But, for what consideration the Commission may want to give to it in other connections, if it should want to, I will let it in for the purposes of the record as I have tried to point out, not in this proceeding as it now stands for hearing.

Mr. Gwathmey: I would like to go on record in view of that ruling to the effect that the carriers have not been put on notice that they are expected here to go into that question as to what is or is not a reasonable scale.

Exam. Waters: I realize that.

Mr. Gwathmey: We are not prepared to go into that, I think it is entirely outside of the hearing.

Exam. Waters: I have tried to say here that I do not think the commission is going to go into it. I do not mean by that that the Commission might not want to be advised as to facts, they like to get at facts.

Mr. Cotterill: If your Honor please, there are millions of dollars in this controversy. You are trying a lawsuit. (Rec., 1956.) We are not in the position of being in this hearing to advise the Commission about matters not on trial. We respectfully say, Mr. Examiner, that if you have the authority to make a ruling, counsel here who have been applying themselves to the scope of the hearing, and have prepared their case with the knowledge before them of

what the scope of this proceeding is, must respectfully [fol. 588] urge your Honor that you take the responsibility of deciding now that that evidence is inadmissible. Now, if the Commission want to hold an Ex Parte hearing here, or at any other time, to receive some evidence not germane to the case on trial, that is something we will deal with when we come to it, but it is most unfair, wholly apart from legal objections, to say that after agreeing that this evidence is inadmissible in the case on trial, that nevertheless you will receive it, for other purposes, with no warning, no opportunity to consider such a situation, and not prepared to deal with it; therefore, it cannot be of aid to the Commission in deciding the question on trial. Counsel have had their opportunity. The motion presented to the Commission they endeavored to support with all the force at their command, and appealed to reopen that question, and they were denied. Now, why should we take the time, and have my clients subjected to the necessity of participating in a case when obviously the testimony is (Rec., 1957) not directed to an issue on trial?

Exam. Waters: I say I am inclined to think perhaps it is not strictly in the reopening of the case, yet the case reads as being reopened.

Mr. Cotterill: If your Honor please, the order says solely on the question of discrimination.

[fol. 589] Exam. Waters: Some of the gentlemen here I understand take the position that it is a new case altogether, so we have certainly a very decided line of difference between the contentions of the different parties.

Mr. Burchmore: Mr. Examiner, my objections have not been stated. I am not subscribing to these contentions that have been ascribed to me.

Exam. Waters: I will watch these questions, however, as they proceed. I am not making any general ruling right now. I am not inclined to say that I am going to rule out every question just because it may be on the border line or open to discussion, or whether it is actually admissible or not under these pleadings. In other words, I am not going to try to draw any nice distinction here. As far as the question that was asked just now is concerned, I said that he could answer it.

Mr. Burchmore: Mr. Examiner, may I make a very short statement for the Georgia Public Service Commission as a party to this proceeding? That Commission has issued (Rec., 1958) an order dealing with the rates on sand, gravel, crushed stone, and so forth, within the state of Georgia. My position as its counsel in this proceeding is the same position which the Interstate Commerce Commission takes in a federal court, where a bill is brought to set aside an order of the Interstate Commerce Commission, namely, I [fol. 590] am here to protect the integrity of the order entered by the Georgia Commission, and that is probably the entire extent of my appearance. Now, the proceeding is being heard under certain pleadings. You made a definition beginning with the hearing yesterday as to the issues. When I hear evidence that appears to me immaterial or irrelevant, I should like to object to it, and to respect whatever your ruling may be, but my position is that the Interstate Commerce Commission shall not enter an order which shall have the effect directly or indirectly of setting aside the order heretofore entered by the Georgia Public Service Commission, or to prevent that Commission in its discretion hereafter from entering any other or different or further order with reference to the transportation of these commodities and the rates thereon which in its judgment as the regulatory body of Georgia is required.

Mr. Cotterill: I take it the essence of the Examiner's indication is that for the moment you are reserving any (Rec., 1959) complete ruling you have suggested that the evidence proceed for a while.

Exam. Waters: I would rather consider the questions as they are asked.

Mr. Watkins:

Q. Mr. Brown, will you answer the question?

[fol. 591] A. Yes sir, I am in favor of it.

The effect on our business in Birmingham of the 17517 scale which became effective October 1, 1927, was that we lost about 80 percent of our business in Birmingham. Since that date we have lost the Birmingham market and now Atlanta is largely our market.

Cross-examination.

By Mr. Gwathmey:

We might exist with the present rates without any increase. (Rec., 1960.) I am talking now of the Georgia rates. We are not satisfied with the interstate rates.

By Mr. Watkins:

Q. You are talking now of the Georgia rates, not the interstate rates?

A. Yes sir.

Q. You are not satisfied with them?

A. No.

By Mr. Burchmore:

I am the same J. H. Brown who was connected with the Central of Georgia. Sand Company on February 17, 1926, and testified at that time as a witness before the Interstate Commerce Commission regarding these rates and I testified at that time that 95 percent of our business went to Birmingham. That is not true now.

By Mr. Brooker:

Gaillard and Junction City have always had and now have the same rates respecting rates to Atlanta. (Rec., 1961.)

[fol. 592] Gaillard takes the same rates for deliveries in Atlanta that Junction City has. That is, they reach the Atlanta and West Point terminal or team tracks in Atlanta at the Atlanta rate. We have the same delivery here on the Atlanta and West Point and the Southern Railway on team tracks and we have the same rate they have. I am not positive the Gaillard has the same rates we have to those deliveries, I understand we are on a parity of general rates. As they have team tracks or special deliveries here, I am not able to say (Rec., 1962).

In connection with shipments from Junction City, I suppose they are made from the branch and the Atlanta & West Point to Atlanta at a rate of $1.00 per ton. They are made from Junction City via a junction with the Southern Railway into Atlanta to team tracks on the Southern. The same is true respecting the central of Georgia and

other deliveries. We have received joint line deliveries from Junction City to Atlanta for all deliveries at $1.00 per ton. We are located on both the Atlanta, Birmingham & Coast and the Central Georgia. Shipments from our pits on the Central of Georgia move into Atlanta via Central of Georgia all the way. I don't know the exact distance but it is greater than via the Atlanta, Birmingham & Coast (Rec., 1963).

There are no interchange tracks at Junction City for the interchange of business between the Atlanta, Birmingham [fol. 593] & Coast and the Central of Georgia. Our plants are at Junction City about a mile from the station of the Atlanta, Birmingham & Coast and our plants on the Central of Georgia are two and one-half to three miles to Junction City proper.

By Mr. Watkins:

Our annual shipments approximate 2500 cars the way we run now and our investment, I should say, was $100,000.

By Mr. Brooker:

We are producing washed sand now (Rec., 1964).

The sand we used to ship to Birmingham was not washed and we began shipping washed sand about July, 1926, after we were eliminated from the Birmingham market. Our price was forced down to 35 cents per ton to compete with others into Atlanta, the Southern Railway shippers, Atlanta Supply & Sand Company. In other words, we equalized our price with that of the Southern Railway shippers. I have heard of 60 cents a ton for Southern Railway shippers into Atlanta but I never did see it. We compete with Montgomery shippers of sand into Atlanta (Rec., 1965), and the difference between our rate and the Montgomery rate to Atlanta is about 30 cents. Yes, we did have something to do with making our price 35 cents; they sold their sand f. o. b. their plant at 15 cents a ton, which made a difference of 45 cents.

By Mr. Walker:

Yes, I said we shipped practically all our sand now to Atlanta and our rate to Atlanta is as low as that of any of [fol. 594] our competitors. If the interstate scale were ap-

plied, I understand our rate to Atlanta would be $1.10. (Rec., 1966.)

If the $1.10 were applied, I don't think I would be able to do business on a differential of 10 cents a pound with Southern Railway shippers; we are selling it now as low as we possibly can. It is my understanding the interstate scale would make the rate from Gaillard 10 cents a ton lower than the scale would make it from Junction City to Atlanta. My interpretation is that he would have a $1.00 rate and we would have $1.10.

Mr. Cotterill: If your Honor please, I would like the record to show that objection is made and a motion to strike is made, to any reference by this witness as to whether he would or would not be put out of business by reason of a removal of the discrimination complained of, as being immaterial, and as being a consequence to which the law gives no heed.

Exam. Waters: The record will show your objection.

By Mr. Ribe:

Yes sir, the 2500 cars I shipped last year was sand and since the increase in rate to Birmingham, that movement is off 80 percent. (Rec., 1967.) Before the increase I shipped 400 cars to Birmingham and now I ship about 20.

As for the increase in business over what I testified in February, 1926, it was, I can say we manufacture a special grade of sand that sells better and we are in the Atlanta [fol. 595] market and building up business right along under the rate that I have.

By Mr. Walker:

No, I don't say we have increased much since May 1st of this year, but up to that time we had built up a nice business here and we have held it by cutting the price of sand at the pit to meet that difference of 10 cents; we had a 90 cent rate in here. (Rec., 1968.)

No, not now does any one else have a lower rate to Atlanta than we have, but when the freight rate went up, we had to absorb it and the reason we did was that that was our selling price; we just made it that way. I make my price, yes sir. I don't know that I control the price on sand in Atlanta today; I do my best; I make my prices.

By Mr. Burchmore:

No, I said my business had increased to 2500 cars annually before May 1, 1928. I was not shipping sand to Atlanta before that time. (Rec., 1969.)

We began shipping sand to Atlanta in the early part of 1926 and got tuned up in our business at Atlanta in the latter part of 1926 and during 1927, shipping approximately 2500 cars to Atlanta in 1927.

By Mr. Walker:

Eighty percent of our production went to Birmingham prior to the time we went into the washed sand business, say, prior to 1926. Our Birmingham rate was increased in December, 1927. (Rec., 1970.)

[fol. 596] 80% of our production during 1927, and before the Birmingham rate was increased, went to Birmingham. In 1927 we had a production of 500 or 600 cars for both Atlanta and Birmingham up to December. I should say that would be 7500 cars and 2500 cars went to Atlanta and other points. (Rec., 1971.)

(Witness excused.)

C. W. Moore was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I live at Junction City and have been engaged for 10 years in the sand business at that place, and my principal market now is at Atlanta. 50% of my business moved to Birmingham before the rate increase to Birmingham became effective. I think that was December, 1927. We had a rate of 79 cents or 80 cents which was increased to $1.35. Our mileage to Birmingham based on the Central mileage is about 196 or 200 miles. Since the rate increase to Birmingham, that market has not remained open to me, as prior to the increase we shipped from 50 to 100 cars a month to [fol. 597] Birmingham and since then from 5 to 20 cars a month. (Rec., 1972.)

In our Atlanta business we compete with our washed sand with Montgomery and with Gaillard and Gaillard is our largest competitor. My delivered price on washed sand is $1.30 and on bank sand my delivered price is $1.20, leaving us a net of 30 and 20, and our investment is about 20,000 dollars. Since I have been in business, our rates to Atlanta have increased from 50 cents to $1.00.

Q. Can you continue in business if there is any further increase in your rates to Atlanta?

Mr. Cotterill: I object to the question, — is immaterial under the interstate commerce act.

Exam. Waters: I will let him answer subject to the objection. (Rec., 1973.)

The Witness: No sir.

Q. From your knowledge of the business, from your experience in the business, from your knowledge of the present market conditions, do you favor the continuation of the single line scale now in force in Georgia?

Mr. Cotterill: Same objection.

Exam. Waters: Same ruling.

The Witness: Yes sir.

Cross-examination.

By Mr. Gwathmey:

Prior to the increase of the rate to Birmingham, it was 79 cents for a haul of 200 miles and the same rate was in effect for Montgomery, (Rec., 1974.)

I testified in the former hearing on this sand and gravel question and opposed increase in our rate to Birmingham [fol. 598] and that if the rate were increased it would put me out of business. It has not, but I thought it would. I am not as fortunate as Mr. Brown. My business has been cut about one-third and now I ship largely to Atlanta. Practically none out of Georgia at this time except Birmingham, where we — 5 or 10 cars a month. (Rec., 1975.)

We think we have a superior grade of sand and that it is recognized as a good building sand.

By Mr. Cotterill:

It has been testified here and I suppose correctly that the freight rate from Montgomery to Atlanta is $1.30 and the delivered price on my washed sand is equal to that rate and on the bank sand it is 10 cents less than that rate. (Rec., 1976.)

By Mr. Brooker:

Since May 1st, our average monthly shipments of sand from Junction City are about 100 cars a month and prior to that time they were about 150. (Rec., 1977.)

The reason my price is 30 cents a ton f. o. b. the plant when Brown at Junction City gets 35 cents is that he has the superior sand.

By Mr. Watkins:

On my present operations, I am just about breaking even. (Rec., 1978.)

(Witness excused.)

[fol. 599] L. J. Downs was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I live at Junction City where I have been engaged in the sand business for 22 years. We are on the A. B. & C. and my present market is Atlanta and, our competitive points are on the Southern Railway. Montgomery does not affect me much because I am in the dry sand business and Gaillard is my chief competitor with dry bank sand. (Rec., 1979.)

Prior to the increase of rate to Birmingham, I sold quite a bit there, but since then have shipped only a few cars. My average price is 20 cents a ton f. o. b. my pit.

Q. With your long experience in the business of manufacturing and selling sand where you have been located, and from your knowledge of the situation, are you in favor or

not of the continuation of the one line scale or one scale for all lines now in force in Georgia?

Mr. Cotterill: Same objection, your Honor.
Exam. Waters: Same ruling.

The Witness: I am.

Cross-examination.

By Mr. Gwathmey:

We load by hand (Rec., 1980), and our investment is about $500 or $600, the cost of getting tracks in.

[fol. 600] By Mr. Brooker:

We ship around 40 cars a month and our competition has always been with Gaillard. Gaillard has been shipping some dry sand I think all the time, but I don't know. (Rec., 1981.) We know Gaillard is our chief competition because we run into them in the market. I knew somebody had been shipping it there and I supposed it came from there. I suppose our sand is about the same as Brown's. I don't think Brown is selling very much dry sand. He sells bank dry sand for 15 cents. I deliver in Atlanta exclusively over the A. B. & C. but at different team tracks in Atlanta, as far as East Point. Yes, all over the city.

(Witness excused.)

B. C. Milner was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I am assistant highway engineer for the State Highway Commission of Georgia which is a large consumer of sand and gravel and slag. (Rec., 1983.) We buy a good deal of slag from Birmingham and sand in Georgia and other points. We have construction work going on practically every county in the state from time to time and it is an advantage to the department to have as many open pits for

sand as we can. Our custom is to accept the lowest bid on all construction work, that is, everything else being equal, we take the lowest bid, and a small difference in the price [fol. 601] per unit of sand would change the acceptance of the bid from one to another. (Rec., 1984.)

The State owns a plant at Oglesby for crushed stone. We are located on the Seaboard Air Line but the greater part of our shipments go over two lines. Until recently the State has been operating that plant at full capacity.

Cross-examination.

By Mr. Brooker:

Yes, quality determines the use of the sand. We have a specification on which all sand is accepted. When I said we always accepted the lowest bid I assumed that the quality of sand passed the specification. (Rec., 1985.)

By Mr. Gwathmey:

I only have charge of making recommendations for purchases. The Board itself has charge of letting the contracts, but I am familiar with purchases made by the Board and know that most of our crushed rock we get in Georgia and we buy a great deal of our sand and gravel in Georgia, all we can that meets the specifications, but we do get some sand from Montgomery. (Rec., 1986.)

I don't know whether our purchases have been largely in Georgia since May 1, 1928 than before that time, and I don't know whether any contracts for the purchase of these materials with producers outside of Georgia were cancelled. If cancelled, it would have been by contractors, as we let these jobs to contractors and they furnish the material. The effort is to purchase, as far as possible, from points in Georgia. If you mean by independent contractors, contractors who are employed to construct a given mileage, [fol. 602] then practically — of the State road construction *road* in Georgia is done by independent contractors. (Rec., 1987.)

By Mr. Walker:

The contracts are made on unit prices per square or cubic yard for paving. For grading, it is all based on the same

thing. I would say probably 25% of the aggregates used in road construction are purchased by the State, leaving 75% purchased by the contractors.

By Mr. Brooker:

During 1928 our Highway construction work has been about the same, probably a little increase; it has been curtailed some in recent months comparing with the beginning of the year and a considerable curtailment this fall. The reason for that has been not altogether weather; our conditions had something to do with it; we had money storms in the early season that took quite a fund. (Rec., 1988.) We have had some jobs completed.

By Mr. Walker:

No, the appropriation has not run out for all the work. We still have work going on, but are short of funds due to disasters that we had. The price bid varies according to the location and accessability. It is a question of transportation as to what unit prices we get.

By Mr. Webster:

The character of materials has to meet our specifications. (Rec., 1989.)

(Witness excused.)

[fol. 603] A. J. Ribe was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I am traffic manager for the Birmingham Slag Company, Birmingham, Ala., which position I have held for about 12 years.

We ship slag principally from Ensley and Alabama City, and to a smaller extent from other points within the Birmingham district.

I am also representing the Montgomery Gravel Company, of Montgomery, Ala., which is a subsidiary of the Birmingham Slag Company.

I participated in the former hearing of this case and appeared as a witness.

I have just two exhibits I would like to file, and I will offer the first one now. (Rec., 1991.)

I desire to offer as my exhibit No. 157-B, being largely a duplication of some of the exhibits presented by the carriers. I desire to get this exhibit into the record because I think it is in more convenient form, since it compares not only the general scale with the Georgia scale over the Trunk Lines single and joint line, but also makes a comparison over the short lines, and shows the rate differences in all instances.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 157-B, Witness Ribe.")

This exhibit is in error at the bottom to the extent of showing that the general basis is now in effect in South [fol. 604] Carolina.

I should explain that the general basis is not in effect 100 per cent in all of the states listed. For instance, in Florida it is in effect only on the line of the Louisville & Nashville Railroad from River Junction and west.

In Tennessee, as I recall it, it is in effect generally in central and eastern Tennessee.

Also the Virginia application is somewhat limited.

The rate columns headed "Georgia," are the rates in effect in Georgia, and the other columns headed "General," are the rates in effect generally in the southeast interstate, and also intrastate in other states than Georgia. (Rec., 1991.)

Back in the early part of August of this year, I asked our sales department, that is, the sales department of the Birmingham Slag Company, to supply me with a list of the projects on which they had bid during the year previous and had lost to competitors in Georgia. I was supplied with a list of nine such projects involving a total tonnage of 129,805 tons. In asking for that information from the sales department I asked that they detail the project number, the unloading points, the tonnage, and the shipping points, and the successful bidders.

I now wish to offer my exhibit No. 158-B, which details those projects, and which shows the rates to the unloading points from the shipping points of the successful bidders.

(The same was thereupon received in evidence, marked [fol. 605] "Shippers' Exhibit No. 158-B, Witness Ribe.")

I think the exhibit speaks for itself, but I desire to call attention to the fact that from the Georgia origins I have not only shown the mileage rates which have been in effect since May 1, 1928, but I have shown the rates that were in effect between April 1, 1925 and April 30, 1928, and the rates in effect prior to April 1, 1925. In other words, I have shown three sets of rates from the Georgia origins, and compared them with the docket 17517 basis. (Rec., 1992.)

At the bottom of the exhibit the various rates have been totaled and simple averages struck.

It will be noted that the Georgia rates back in 1925, denoted an average of 140 cents a net ton. By the new rates that went into effect on April—in April, 1925, that average was reduced to 103 cents. By the last rates that went into effect May 1, 1928 the rates were reduced to an average of 96 cents, which is 19 cents lower than the rates would be under the docket 17517 basis.

Also in this exhibit I have inserted the rates from Ensley, Ala., our principal shipping point, to the same points of destination, showing not only the rates in effect prior to October 1, 1927, but the rates in effect since that date. It will be noted that on the average we get an increase of two cents a ton.

Cross-examination.

Mr. Burchmore:

The first project was supplied by Clermont, Ga., instead [fol. 606] of slag from Ensley, or gravel from some other place. On the first project, the stone moved to Lawrenceville, Dacula, Auburn and Carl, Ga., four unloading points. I cannot tell you whether we bid at Ensley on a haul short line of around 200 miles and Clermont bid on a haul of 49 to 60 miles, because I don't know the way the Sales Department bid, whether they supplied the material from Alabama City, or elsewhere; Ensley was put on the exhibit as a comparison only by myself. We have a plant at Alabama City which is shorter by 55 to 60 miles to North Georgia,

and through Atlanta south, around 30 miles shorter. (Rec., 1994.)

I would like to add, Mr. Burchmore, that the reason I used Ensley in preference to Alabama City is due to the fact that Ensley is in the Birmingham district, and reached by more Georgia Trunk Lines than Alabama City, and I used Ensley having in mind the contention of some of our Georgia friends that our advantage is in having more single line hauls than the Georgia shippers.

By Mr. Webster:

The last two columns are the rates from Ensley and the first four rate columns are the rates from the Georgia origins; they are not comparable. (Rec., 1995.)

By Mr. Watkins:

From these particular points, yes, it is correct to say that for an average distance of 83 miles the Georgia shipper pays 96 cents, and if docket 17517 were put in we would pay $1.15. (Rec., 1996.)

(Witness excused.)

[fol. 607] ROBERT N. SPRINGFIELD was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

Mr. Burchmore: Mr. Examiner, the Georgia Public Service Commission is appearing in this proceeding in protection of its order of March 13, 1928, and its jurisdiction over the intrastate rates in Georgia, and as the Examiner of the Interstate Commerce Commission will appreciate, is (Rec., 1996) in a somewhat different position than the ordinary litigant, in that the Georgia Commission has a duty, is a public body in Georgia, with the duty to justly determine the freight rates and charges of the railroads impartially as between the shippers, the railroads themselves, and the public that pays the freight in the last analysis. And also in this situation the Georgia Public Service Commission is a body which ordinarily obtains its information in the same way that the Interstate Commerce Commission obtains in-

formation, that is by the facts adduced at public hearings at which all parties in interest are permitted to testify to relevant matters.

I explain that because there are some features ordinarily gone into in rate matters that involve questions that are not concerned in the business of the Georgia Public Service Commission in the way that they are in the business of a carrier or the business of a shipper.

We have some facts to present in opposition to the proposed section 13 order, and in support of the order heretofore ordered by the State Commission.

[fol. 608] I reside at Atlanta, Ga., and am secretary of the Georgia Public Service Commission, which office I have held for 3½ years. (Rec., 1997.)

I have written a true copy of portions of the Constitution of Georgia and of the statutes providing for the Georgia Public Service Commission which compillation is made for presentation as an exhibit in this case by Chairman Perry of the Commission.

(The same was thereupon received in evidence, marked "Georgia Public Service Commission's Exhibit No. 159-B, Witness Springfield.")

I now present a true copy of the order dated March 13, 1928 in docket No. 16384. The order was entered after public hearings, on a petition which had been filed by the carriers, as recited in the order, and after consideration of the case by the members of the Commission in executive session, all being in accordance with the orderly procedure customarily followed by the commission. (Rec., 1998.)

Mr. Burchmore: We offer this true copy of this order in evidence, and ask that it be received and marked as exhibit 160-B.

(The same was thereupon received in evidence, marked "Georgia Public Service Commission's Exhibit No. 160-B, Witness Springfield.")

No petition for a rehearing or reconsideration has been filed with the commission in the proceeding covered by that order of March 15, 1928, and there is not pending on the docket of the Commission any application or petition of any [fol. 609] carrier, person, firm or corporation seeking or

involving any proposed increase in rates in Georgia on sand, gravel, crushed stone, slag, or chert. I take no part in the deliberations of the Commission in rate cases, and had nothing to do with the adoption of the Commission's order of March 13, 1928. (Rec., 1999.)

(Witness excused.)

E. M. PRICE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I reside at Atlanta, Ga., and am connected with the Georgia Public Service Commission, having held the position for the past nine years with the title of Rate Expert and as such am familiar with the sand, gravel and crushed stone rate adjustments within Georgia, as well as its history and the relationship of the state rates to interstate rates. I have prepared a number of statements to be offered as exhibits in this proceeding which are to the best of my knowledge true and correct according to the tariff scales and orders upon which they are based. If there are any errors they are unknown, inadvertent and clerical. (Rec. 2000.)

In connection with the first exhibit, a map marked 161-B, I desire to state briefly the history of the rate situation in Georgia.

The Georgia Commission entered an order dated February 25, 1925, and by its terms effective April 1, 1925, the effect of which was to increase or permit the carriers to [fol. 610] increase, very materially the rates on sand, gravel, crushed stone, slag and chert between points in Georgia where the preponderance of the movement was taking place.

Prior to April 1, 1925, the rates in Georgia on sand, gravel, crushed stone and so forth, were in a very chaotic condition. The Georgia Commission had made a revision of these rates in 1917, but the order never became effective on account of federal control of the carriers, which caused the Georgia Commission to indefinitely suspend the effective date of its order.

Prior to the revision by the Georgia Commission, effective April 1, 1925, the great preponderance of the movement of these materials between points in Georgia was on special rates, voluntarily established by the carriers, and lower than the maximum rates then authorized by the Commission, on what is known as the class P basis. (Rec. 2002.)

Some of the carriers had not seen fit to establish any special rates for the purpose of equalizing the points of production on their lines with the points of production on lines that had established these special rates, and on this account the Georgia Commission was confronted with many complaints of alleged discrimination.

In view of the location of the Georgia industries it was and is the expressed judgment of the Georgia Commission that, to provide rates on basis of combination, or with joint line differentials for any extended distance, would have the effect of causing undue discrimination between the Georgia [fol. 611] shippers, that is, against certain shippers in Georgia, in favor of other shippers in Georgia, and would also cause discrimination against the Georgia shippers in favor of shippers with plants at Montgomery, Ala., Birmingham, Ala., and Chattanooga, Tenn..

Mr. Cotterill: Your Honor, I do not quite know what was the scope of the prior hearing—you made reference to this—but as far as I have heard it, it strikes me as far afield from any issue here involved. (Rec. 2002.) It may be taken for granted that the Georgia Commission has proceeded with the best information before it, but that is not the question in issue. It is immaterial to any pending question what may have been the motive of our Georgia Commission, the sincerity with which it functioned, or the past conditions which it had before it. I most respectfully request the Examiner to limit the testimony to matters in issue in the case on trial.

Mr. Gwathmey: It must be understood, Mr. Examiner, that I join in that objection.

Exam. Waters: I understand thoroughly, but I am not quite inclined to be as technical as you are, and to be a little more liberal. The gentlemen have prepared their defense, and if I think it is going too far beyond the line, I certainly will call a halt. (Rec. 2003.)

A. My exhibit No. 161-B is a map of all the railroads in Georgia, and this map also shows the location of some of the principal producing points in Georgia of sand, gravel, and crushed stone.

[fol. 612] To illustrate what I have just stated, it will be noted that a crushed stone plant is located on the Georgia Railroad just northeast of Macon, between Milledgeville and Warrenton, Ga., this particular plant being located at Sparta, Ga.

It will be noted there is a crushed stone plant on the Central of Georgia Railway at Perry, Ga., just southwest of Macon, Ga.

There is also a crushed stone plant located on the Southern Railway, just north of Macon, at Holton, Ga.

These plants would all come in competition with each other on any business developed on the line of the Central of Georgia, or Southern Railway.

It will be noted that the territory of the Sparta plant on the Georgia Railroad would be exceedingly limited if confined to business on the Georgia Railroad; whereas, the plant on the Southern Railway, or the plant on the Central of Georgia Railway, would have a considerable territory on single line. However, there is a great deal of territory reached by the Southern Railway that could not be reached by either the Perry, Ga., or Sparta plant on single line. A glance at this map shows that this illustration may be multiplied many times.

This map also shows the lines of railroads operating out of Montgomery, Birmingham and Chattanooga through Georgia.

From Montgomery it will be noted that the Atlanta & West Point Railroad have the direct line to Atlanta, which [fol. 613] is one *one* of the principal markets for these materials in the South.

It will also be noted that the Atlantic Coast Line, Seaboard Air Line and Central of Georgia Railway have their direct rails across the state, with a net work of branch lines through the state, which provides for single line movement from Montgomery to all that territory.

The producers in Georgia at points on the Georgia Railroad, the Southern Railway, and the Atlanta, Birmingham and Coast Railway come in competition with the producers at Montgomery, and it will be noted that in every

instance the movement from the Georgia producing point to points located on the lines of the Atlantic Coast Line, Central of Georgia and Seaboard Air Line would be joint line. (Rec. 2005.)

This map shows the same condition at Birmingham, Ala., which is served by the Central of Georgia; Atlanta, Birmingham & Coast; Southern Railway, and Seaboard Air Line Railway. All of these lines, except the Seaboard Air Line, operating out of Birmingham, directly across the state of Georgia with single line hauls. This is also true of the situation at Chattanooga, Tenn., where the Central of Georgia and Southern Railway have direct lines throughout the state of Georgia.

Exhibits which will be filed later will show more in detail the rate situation caused by the location of these Georgia industries, and the state being served by both [fol. 614] north and south lines and east and west lines.

Mr. Burchmore: We offer this map in evidence as exhibit 161-B and ask that it be received.

Mr. Cotterill: Mr. Examiner, I reserve objection until the use is made a little plainer. The map as a map is not objectionable. It may be shown to be objectionable later, and I reserve the right——

Mr. Burchmore: The map is offered for this express purpose, and for any other purpose for which it may be useful, namely: Exhibit 160-B is a copy of an order regularly made and entered by the Georgia Public Service Commission prescribing rates within the state of Georgia, and in which certain of the facts are set forth. (Rec. 2006.) Among other things there is a statement alluded to by Mr. Price in his comments on this exhibit, that to prescribe within the state of Georgia a joint line scale higher than a single line scale would produce unjust discrimination against Georgia producers and in favor of other Georgia producers. The map is in part offered as a part of the witness' showing that it is true, namely, that the joint—that a joint line *indentional* with a single line scale in Georgia would effectuate these discriminations thus found by the Georgia Commission.

Mr. Gwathmey: That being true the map is objected to.

Mr. Cotterill: Certainly it is. We will fight that out right now.

Mr. Burchmore: Oh, no, we will not fight anything out; [fol. 615] we will have a ruling possibly by the Examiner. I certainly was frank in telling you what it showed.

Mr. Cotterill: I appreciate it. Now, your Honor, the proposition is this: This exhibit is tendered as relavant to this proceeding as supporting or tending to support a certain conclusion of the Georgia Public Service Commission that there would be discriminations within the state of Georgia as between shippers and communities if a joint line charge is made higher than for single line movements. (Rec. 2007.) We most respectfully say that there is no question of that character pending before the Interstate Commerce Commission, and therefore, this exhibit and the testimony to which it refers, is wholly irrelevant and immaterial.

Mr. Walker: I join in the objection, Mr. Examiner.

Exam. Waters: I will take it subject to the objection.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 161-B, Witness Price.")

Mr. Cotterill: Pardon me for asking the form of your ruling. You say you admit it subject to the objection?

Exam. Waters: Yes, sir.

Mr. Cotterill: May I ask whether you have sustained or overruled the objection?

Exam. Waters: So far as I am concerned you may consider your objection overruled.

By Mr. Burchmore:

My exhibit No. 162-B is a comparative statement of the single line rates on chert, sand, crushed stone, and so forth, [fol. 616] prescribed by the Georgia Commission, as compared with the interstate rates prescribed as maximum in Interstate Commerce Commission docket I. C. C. 17517.

The purpose of this exhibit is to show the relative measure of the two sets of rates.

It will be noted that for distances under 190 miles the Georgia rates are in most instances the same as the interstate rates, but in some instances are five and ten cents per ton less; whereas, for distances above 190 miles, up to and including the maximum distance of 460 miles, the Georgia rates are the same or higher than the maximum interstate

rates, in most instances the Georgia rates being five cents and ten cents per ton greater than the maximum interstate rates. (Rec. 2011.) Yes, the column showing I. C. C. 17517 is the single line scale prescribed by the Commission.

Mr. Burchmore: We ask that this exhibit be received as exhibit 162-B. (Rec. 2012.)

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 162-B, Witness Price".)

My exhibit 163-B shows the rate of progression of the Georgia scale. This exhibit is self-explanatory and shows the consistency of the rate of progression. Up to 130 miles there is a ten cent addition for each 20 miles of distance then ten cents for each 30 additional miles up to 280 miles, and beyond that ten cents for each 40 miles to the maximum haul with the state of 460 miles.

Mr. Burchmore: We ask that this be received as exhibit [fol. 617] 163-B.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 163-B, Witness Price.")

What is shown by your next exhibit, Mr. Price, marked 164-B?

My exhibit No. 164-B shows the rate of progression of the interstate scale, I. C. C. docket 17517.

Attention is directed to what we consider an inconsistency in the rate of progression of the rate. It will be noted that the mileage blocks are made up of 10 miles, 20 miles, 25 miles, 30 miles and 40 miles, but the rate is not graded uniformly with the mileage blocks. (Rec. 2013.)

Mr. Burchmore: At this point we offer 164-B and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 164-B, Witness Price.")

The rate prescribed by the Georgia Commission, effective April 1, 1925, on crushed stone and gravel for the distance of 175 miles, was 130 cents.

At that time the rate making distance from Montgomery, Ala., to Atlanta was published by the Western of Alabama

and Atlanta & West Point Railroad, in its tariff I. C. C. 80, as 174 miles.

It will be noted that the rate fixed in docket 17517, for a distance of 175 miles, is 130 cents, which is the same as that prescribed by the Georgia Commission for this distance. However, it will be noted that the rate of progression for the next 25 miles in the 17517 scale is only five cents; [fol. 618] whereas, the previous blocks were 10 cents, and it will be noted that the following mileage block of 30 miles also shows a rate progression of five cents, and then in the next two 30 mile blocks the rate progression returns to 10 cents. (Rec. 2014.)

Entirely independently of any sand, gravel or stone matter, on June 30, 1927, the Atlanta & West Point Railroad filed a petition with the Georgia Commission for authority to revise its distance table between Atlanta & West Point, Ga., this railroad being a strictly intrastate line. At the time of the filing of this petition the distance between Atlanta and West Point was shown as 86 miles, and the petition asked authority to increase this distance to 90 miles.

After proper hearing the Georgia Commission found that the petition of the Atlanta & West Point Railroad was justified, and authority was granted on September 15, 1927 to increase this tariff distance, to conform to the actual rail distance. This increase in tariff distance between West Point and Atlanta had the effect of increasing the tariff distance from Montgomery to Atlanta from 174 miles to 178 miles, which was published by the Atlanta & West Point and Western of Alabama Railroad in supplement 2 to its tariff I. C. C., A-80, effective September 22, 1927.

Effective January 3, 1928, by supplement 3 to Western of Alabama Railroad I. C. C., A-80, the tariff distance from Montgomery to West Point was decreased from 88 miles to 86 miles, which produces the present tariff distance from Montgomery to Atlanta, via the direct line of Western of [fol. 619] Alabama and Atlanta & West Point Railroad, of 176 miles. (Rec. 2015.)

In other words, the short line tariff mileage from Montgomery to Atlanta has been changed to 176 miles to conform to the actual physical rail distance, single line.

As is shown on my exhibit, the rate prescribed in docket 17517, for distances 200 miles and over 175 miles, is 135 cents. The rate published by the carriers from Montgomery to Atlanta is 130 cents. This rate will be discussed in later exhibits.

My exhibit No. 165-B is a statement showing the rates prescribed by the Georgia Commis-ion in effect prior to May 1, 1928, with the present rates and rates prescribed as maximum in I. C. C. docket 17517.

It will be noted that the intrastate rates in effect prior to May 1, 1928, which were the maximum rates made effective April 1, 1925, provided for a slightly higher basis on crushed stone, washed gravel and slag, than on chert, sand, and so forth, and also provided for a joint line differential for distances under 100 miles.

The present rates in Georgia, which were made effective May 1, 1928, it will be noted for the most part, are higher than the joint line rates previously in effect in Georgia on sand, gravel, and so forth, and in most cases equal or are higher than the joint line rates on crushed stone, and so forth, in effect at that time, for distances above 100 miles. (Rec. 2016.)

[fol. 620] It will be noted that the present Georgia rates are generally equal to or higher than the maximum single line rates in I. C. C. docket 17517, and for distances above 300 miles are the same as the maximum joint line rates in I. C. C. docket 17517.

Mr. Burchmore: We offer exhibit 165-B and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 165-B, Witness Price.")

Mr. Gwathmey: I want it understood that the objection stands to these exhibits.

Mr. Burchmore: If there is to be objection, I want it made as these exhibits are offered. We may stop offering exhibits if they are objected to.

Mr. Gwathmey: I merely want to save the point in a general way.

Mr. Burchmore: If you have a point to make now that applies to the other exhibits, I will be glad if you will make it, because I want to know what it is.

Mr. Cotterill: I have stated my position. This case is limited by its terms to a question whether there is or there is not a violation of section 13. (Rec. 2017.) There is nothing in the exhibits so far offered which bears on that issue and, therefore, it is irrelevant to the only question that is pending. If its relevancy can later be established, that is something else.

Exam. Waters: We understand your position, Mr. Cotterill. There might be some specific part of some of these exhibits that you might want to object to in addition to your [fol. 621] general objection.

Mr. Gwathmey: Up to this time I have only the general objection already noted, it being on the same grounds as that stated by Mr. Cotterill.

Mr. Burchmore: Does that objection lie to exhibits 161-B to 165-B inclusive, or either of them?

Mr. Gwathmey: The objection lies generally to all of the exhibits insofar as they may have a bearing or be used as bearing upon the matter to which we have referred. Now, the exhibits are not objectionable for certain purposes. For instance, exhibit 162-B, as I understand it, is simply a comparison of the interstate and intrastate scales, and simply shows the discrimination complained of. The general objection I think is clear.

Exam. Waters: I think it is pretty clear in the record.

Mr. Burchmore: Well, I want my position to be clear, that I ask that no objection shall be considered unless specifically made to an exhibit. I want really to know if any of them is objectionable even on the ground that is generally stated. (Rec. 2018.)

Mr. Cotterill: Every one of them is objectionable on that ground insofar as they are to be used in any way, shape or form for any purpose other than the issues involved in this proceeding.

[fol. 622] Mr. Burchmore: When an exhibit is offered without stating its purpose, I take it that it is offered for any material or relevant purpose.

Mr. Cotterill: And that is the reason why the objection is stated in the same terms, that it is objectionable if it is

to be used for any purpose other than the issues involved in this proceeding.

By Mr. Burchmore:

Q. What has been the policy and course of the Georgia Public Service Commission with regard to the joint line and single line mileage scales?

Mr. Gwathmey: I understand from Mr. Burchmore that he is insisting that we make our objection specific in each instance, so I am therefore compelled to note my objection to the witness answering this question.

Mr. Cotterill: Certainly the policy of the Georgia Commission in the past, present and future is irrelevant to any pending question before this Commission, and is objected to most seriously. (Rec. 2019.)

Mr. Walker: In order to conserve time, I would like the record to show that I join in the objections made by Mr. Gwathmey each time they are made, on behalf of the carriers I represent.

Exam. Waters: He may answer subject to the objections which are already in the record.

The Witness: Prior to May 1, 1923, all rates authorized by the Georgia Commission applied single line over the [fol. 623] individual carriers, both for classes and commodities, and Freight Rule No. 27 of the Commission provided that joint line rates would be made 90 per cent of the locals of each line.

Effective May 1, 1923, the Georgia Commission revised all the class rates and provided for joint line scales that were differentials higher than the single line scales, this revision being a part of the general revision of all rates between points in Georgia that was started by the Georgia Commission July 14, 1921.

Subsequent to May 1, 1923, the Commission has revised the rates on many of the principal commodities, including cotton, cottonseed, canned goods, road oil, peanuts, agricultural limestone, cotton ties, potatoes, velvet beans, sewer pipe, waste wood, roofing, tile and furniture. The revision of the rates on the commodities just named was made prior to the order of the Interstate Commerce Commission in the Southern Class Rate case, I. C. C. docket 13494, and the

Georgia Commission provided for joint line differentials in each of these cases. (Rec. 2021.)

Subsequent to the Southern Class Rate class, I. C. C. docket 13494, the Georgia Commission has adopted and put in force the class rates prescribed by the Interstate Commerce Commission, and has also revised the rates on fertilizer, sugar, roofing, wooden building material, cement, lime, brick, sand and gravel, iron and steel articles. The Georgia Commission did not provide any joint line differentials on any of these commodities, except on brick, in which case [fol. 624] the Georgia Commission approved the rates which had been approved by the Interstate Commerce Commission in its docket I. & S. 1885, and the joint line differentials on brick faded out at 80 miles.

It is correct to say that in prescribing rates on sand and gravel in its first order, effective April 1, 1925, the Georgia Commission did provide for joint line differentials under 100 miles, but when these rates were again revised, effective May 1, 1928, the single line rates were generally increased and all joint line differentials eliminated.

Q. Now, will you comment on what has been shown by exhibits 161-B to 165-B, inclusive, in the light of what you have said about the policy of the Georgia Commission, and in the light of the decisions of the Interstate Commerce Commission dealing with this principle? (Rec. 2021.)

Mr. Cotterill: If your Honor please, out of deference to counsel's insistence that objections be stated when they occur, I must respectfully urge that this is no time and place for this witness to comment any further on his own exhibits in the light of decisions of the Interstate Commerce Commission. We will come to the argument of the case on those decisions of the Commission at a later stage of the proceeding.

Exam. Waters: I feel that you ought not to pursue this question too far. I am trying to be justly liberal, but I do not want to go too far about this. I think these decisions speak for themselves, and can be examined by any one.

Mr. Burchmore: I think, Mr. Examiner, I may fairly [fol. 625] say for the Georgia Public Service Commission that where the Interstate Commerce Commission is conduction- a proceeding to see whether in effect its judgment and its order shall supersede the judgment and order of

the State Commission of Georgia, that the State Commission of Georgia is entitled to ask that the Interstate Commerce Commission shall hear all of the evidence that the rate expert and counsel for that Commission sincerely believe is pertinent to the showing of the integrity of the order, and necessary to the defense against the substitution of the judgment of the Interstate Commerce Commission here. I ask that Mr. Price be permitted to answer this question. If you think he should not answer it, I will ask you to sustain the objection, but I am going to ask him to answer unless you do sustain the objection. (Rec. 2023.)

A. As we have shown by exhibits which I have filed, if joint line differentials should be applied to the rates on sand, gravel and crushed stone in Georgia, it would have the effect of causing discriminations between the producers and shippers of these materials in Georgia, and would also cause discrimination against the shippers in Georgia in favor of shippers at Birmingham and Montgomery, Ala. For this reason I am of the opinion that the Georgia Commission was clearly justified when it provided a common scale to be applied for both single and joint line, the rates provided in this scale being generally higher than the rates previously in effect in Georgia.

[fol. 626] The Interstate Commerce Commission has not held strictly to the theory of joint line differentials in prescribing rates for interstate application in southern territory, although it is true that prior to the Southern Class Rate Investigation, I. C. C. docket 13494, in some cases the Interstate Commerce Commission did prescribe joint line differentials. (Rec. 2025.)

However, subsequent to docket 13494, the Interstate Commerce Commission has prescribed scales of rates on cement, docket 15806; sugar, docket 13569; fertilizers, docket 16295; paving material, docket 17805; lime, docket I. & S. *a*874; roofing, docket 11203; sand and gravel, docket 17517.

No joint line differentials were authorized in any of these cases, except in docket I. & S. 2874, rates on lime between southern points, in which case the Commission found justified the carriers' proposed rates. The rates published by the carriers, which were found justified by the Commission, provided for joint line differentials under 80 miles, at which point the single and joint line rate merged.

In brick and clay products in the south, I. & S. docket 1885, the Interstate Commerce Commission prescribed a distance scale which provided for joint line differentials under 80 miles, where it was merged with the single line scale.

In the matter of rates on brick and clay products, the carriers submitted to the Georgia Commission for approval the rates prescribed by the Interstate Commerce Commission in I. & S. 1885, and the record before the Georgia Com- [fol. 627] mission shows that on account of competitive conditions it was necessary to merge the single and joint line scales at 80 miles. These rates were approved by the Georgia Commission. (Rec. 2026.)

The carriers also submitted to the Georgia Commission for approval the rates on lime which were found justified by the Interstate Commerce Commission in I. & S. 2874. After considering the evidence in this case, it was the expressed judgment of the Georgia Commission that joint line differentials should not be applied on intrastate lime traffic in Georgia, and therefore, the Georgia Commission revised the lime rates for distances under 100 miles, and eliminated the joint line differentials. In doing this some of the single line rates that had been proposed by the carriers were permitted to be increased.

In I. & S. docket 2414, salt, between western and southern points, the Interstate Commerce Commission prescribed a distance scale of rates in the southwest that was made to apply single and joint line, and in its order pointed out that the addition of differentials for joint line hauls from and to many points over a wide scope of territory is always attended with serious complications.

In the Western Cement case, 48 I. C. C. 201, the Commission prescribed a common scale for single and joint line application, also in the Hudson Valley Coke & Products Corporation case, docket 18386, decided July 20, 1927, 129 I. C. C. 472, the Commission established a mileage scale on coke without joint line arbitraries. This is also true in [fol. 628] the Hudson Valley Coke & Products case, docket 18387, 139 I. C. C. 59, where the Commission prescribed a mileage scale on pig iron from Troy to New England points without joint line differentials. (Rec. 2027.)

From this it will be noted that although the Interstate Commerce Commission has in some cases prescribed joint

line differentials, the tendency at least has been to prescribe rates without joint line differentials.

Q. Have you prepared a series of exhibits which deal with the statements that are attached to the carriers' printed complaint that preceded the institution of this hearing, and which carriers' exhibits purported to show a discrimination against interstate points caused by the Georgia rates?

—. My exhibit 166-B is a statement showing corrections which we have made on exhibit B attached to the complaint. I have also added to this exhibit figures showing what the rates would be from Columbia, S. C., to points in Georgia if the rates prescribed by the Georgia Commission were applied.

It will be noted that the carriers' exhibit B shows the rate from Columbia, S. C., to Willacoochee, Ga., under the 17517 scale, to be 170 cents; whereas the carriers have actually published a rate of 160 cents. (Rec. 2028.)

It will also be noted that the rate published from Columbia to Brookfield, Tifton and Sylvester, Ga., is less than the 17517 maximum scale.

[fol. 629] This exhibit of the carriers also shows a comparison of rates from Steel Creek, S. C., and Montgomery, Ala., to various Georgia points, which are shown on page 2 of my exhibit, and it will be noted that the rates from Steel Creek to Willacoochee, Tifton and Ty Ty, Ga., are lower than the maximum rates prescribed in docket 17517.

In connection with this exhibit it will be noted there will be no great difference in the present rates from these interstate points to Georgia destinations shown if the Georgia rates were applied interstate.

Mr. Burchmore: We offer exhibit 166-B and ask that it be received, unless there is objection thereto.

Mr. Gwathmey: We note the objection already made. (Rec. 2029.)

Exam. Waters: It is received subject to all the objections made.

(The same was thereupon received in evidence marked "GPSC Exhibit No. 166-B, Witness Price.")

My exhibit No. 167-B is a statement showing Exhibit C attached to the complaint of the carriers and to which I

have added the Georgia rates to show the result if the Georgia rates were applied from the interstate points of origin.

The effect of this exhibit is practically the same as my previous exhibit.

I would like to direct attention to the rate from Lithonia, Ga., and Columbia, S. C., to Vidalia, Ga. The distance from Lithonia to Vidalia is 206 miles and the rate prescribed by [fol. 630] the Georgia Commission effective May 1, 1928 is 140 cents per ton, and the carriers are seeking in effect an order that would increase it to 150 cents per ton. This is compared with the interstate rate of 140 cents per ton from Columbia to Vidalia, a distance of 217 miles. (Rec. 2030.)

Mr. Burchmore: We offer that in evidence as exhibit 167-B and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit 167-B, Witness Price.")

Q. What is your next exhibit, Mr. Price?

A. My exhibit No. 168-B is a statement of exhibit E attached to the complaint, showing corrections which we have made.

Attention is directed to the many errors in the carriers' exhibit in the rates and distances from Elberton, Ga., to points of destination shown on this exhibit.

It will be noted that the carriers' exhibit shows the distance from Elberton to Cartersville, Ga. as 82 miles, and the present Georgia rate from Elberton as 90 cents per ton; whereas, the correct distance from Elberton to Cartersville is 154 miles, and the maximum rate authorized by the Georgia Commission is 120 cents, and the carriers seek to increase the rate to 140 cents. This rate from Elberton to Cartersville is compared with the rate from Knoxville, Tenn., to Cartersville where the distance is 148 miles, or only six miles less than the distance from Elberton, and the rate is 120 cents, the same as the present rate from Elberton to Cartersville, or 20 cents per ton lower than the rate would be under the order apparently sought by the [fol. 631] carriers in this proceeding. (Rec. 2031.)

Attention is also directed to the exhibit showing the rate from Junction City to Cartersville of 120 cents for a distance of 149 miles, as compared with the same rate from

Knoxville, Tenn., to Cartersville for a distance of 148 miles.

This exhibit, as corrected, shows a correct picture of the situation, and certainly does not show that the Georgia shipper has any advantage over the shipper at Knoxville and Chattanooga for equal distances.

Mr. Burchmore: We offer exhibit 168-B in evidence and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 168-B, Witness Price.")

(Subject to objections by Messrs. Gwathmey and Cotterill.) (Rec. 2032.)

My first of such series is a statement of rates on crushed stone from Stockbridge, Ga., which is located on the Southern Railway, just south of Atlanta, as compared with the rates from Norris, Ga., which is located on the Georgia Railroad, 72 miles northeast of Macon, the destination territory being the line of the Southern Railway south of Macon, between Macon and Brunswick, Ga.

Norris, Ga., is not shown in appendix A of docket 17517 as a shipping point. However, this is one of the most important shipping points of clay gravel in Georgia.

This movement will be single line from Stockbridge and joint line from Norris, the junction point being Macon, Ga. [fol. 632] It will be noted that the distance from Stockbridge to Hawkinsville is 118 miles. The rate prescribed by the Georgia Commission is 110 cents, which is the same rate in docket 17517, single line for this distance. (Rec. 2033.) The distance from Norris to Hawkinsville is 121 miles, and the rate prescribed by the Georgia Commission is 110 cents, or the same as from Stockbridge. However, should the full 17517 scale be applied from Norris, the rate would be 125 cents, or a discrimination against Norris to the extent of 15 cents per ton.

To McRae, Ga., the distance from Stockbridge is 146 miles, and from Norris 149 miles. The rate fixed by the Georgia Commission from both points is 120 cents, whereas the full measure of the scale rates fixed in docket 17517 would be 120 cents from Stockbridge and 135 cents form Norris. This discrimination is reflected throughout the exhibit. In other words, the rates fixed by the Georgia

Commission removes any possibility of discrimination between these Georgia industries, whereas the application of the 17517 rates would create discrimination.

It is true there is no direct competition between the material produced at Norris, which is clay gravel, and the material shipped from Stockbridge, which is crushed stone.

But under former orders of the Georgia Commission, and in many former interstate railroad tariffs, clay gravel enjoyed lower rates than washed gravel and crushed stone, [fol. 633] and was brought up to a uniform level or common rate with crushed stone by the order in docket 17517. (Rec. 2034.)

My next exhibit will not be subject to this comment, since it involves two shipping points producing directly competitive materials.

Mr. Burchmore: We offer the exhibit just described by the witness and ask that it be received in evidence as exhibit 169-B.

Mr. Gwathmey: Same objection.

Exam. Waters: It will be received subject to the objection.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 169-B, Witness Price.")

In Exhibit 169-B, on the first line, Norris to Macon, should appear as a single line instead of joint line haul, and in the last column, the 17517 maximum scale should be 90 cents instead of $1.05. (Rec. 2035.)

My exhibit 170-B is similar to my previous exhibit, being a statement of rates on gravel and crushed stone from Columbus, Ga. and Graysville, Ga. (Rec. 2036.)

Columbus, Ga. is located 116 miles southwest of Atlanta, and is served by the Southern Railway for the purpose of this exhibit. It is not named among the producing points in appendix A to the decision in No. 17517, but it is an actual shipping point of washed gravel. Graysville, Ga., is a shipping point of crushed stone, and is located on the Western & Atlantic Division of the Nashville, Chatta- [fol. 634] nooga & St. Louis Railroad, 120 miles north of Atlanta.

The destination territory on this exhibit is the line of the Southern Railway northeast of Atlanta to the South Carolina state line, Atlanta being the junction point.

On this exhibit it will be noted that the distance from Columbus to Gainesville, Ga., is 169 miles, and from Graysville to Gainesville 173 miles. The rate fixed by the Georgia Commission from both Columbus and Graysville to Gainesville is 130 cents per ton; whereas, the rates fixed in docket 17517, and which it is apparently sought in this proceeding to impose as minimum intrastate rates, are, from Columbus, 130 cents, and from Graysville, 140 cents per ton, or a discrimination in favor of Columbus of 10 cents per ton.

The distance from Columbus to White Sulphur, Ga., is 175 miles, and from Graysville to White Sulphur, 179 miles, and the rate fixed by the Georgia Commission to White Sulphur from both Columbus and Graysville is 130 cents. This is also the rate fixed in docket 17517 for the distance from Columbus to White Sulphur, but docket 17517 fixes a maximum rate for the joint line distance from Graysville to White Sulphur of 145 cents, which would create a discrimination against Graysville of 15 cents per ton. (Rec. 2037.)

These discriminations are reflected throughout the exhibit.

Q. When you speak of discriminations, you are speaking of intrastate, are you not?

[fol. 635] A. These exhibits here are picturing the Georgia situation.

Mr. Burchmore: We offer exhibit 170-B in evidence, and ask it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 170-B, Witness Price.")

Mr. Gwathmey: We make the same objection, Mr. Examiner.

Exam. Waters: Same ruling.

In the first line of my exhibit, 170-B, Graysville to Atlanta should be single line; 120 miles, and the 17517 scale for that distance is $1.10. (Rec. 2038.)

My exhibit No. 171-B is a comparison of rates on sand, from Columbus, Ga. and Junction City, Ga., to destinations on the Central of Georgia Railroad, north of Newnan, Ga., between Newnan and the Tennessee state line.

Columbus, Ga., is located southwest of Atlanta, on the Central of Georgia Railroad; whereas, Junction City, Ga.,

is located on the Atlanta, Birmingham & Coast Railroad, south of Atlanta. The distance from Columbus, Ga., to Cedartown, Ga., is 144 miles, and from Junction City, Ga., 142 miles. The maximum rate fixed by the Georgia Commission from both Columbus and Junction City to Cedartown is 120 cents. This is also the scale rate fixed in docket 17517 for the distance from Columbus to Cedartown, but docket 17517, if applicable thereto would fix a rate from Junction City to Cedartown of 135 cents, creating a discrimination in favor of Columbus of 15 cents per ton. (Rec. 2039.)

[fol. 636] The distance from Columbus to Clem, Ga., is 97 miles, and from Junction City, Ga., 95 miles. The rate fixed by the Georgia Commission from both Columbus and Junction City to Clem is 100 cents. This is also the scale rate fixed in docket 17517 for the distance from Columbus, but docket 17517 would produce a rate of 115 cents from Junction City, or a discrimination against Junction City of 15 cents per ton. These discriminations are reflected throughout the exhibit.

Mr. Burchmore: We offer exhibit 171-B consisting of two pages, and ask that it be received.

Mr. Gwathmey: Same objection.

Exam. Waters: Received subject to the objection.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 171-B, Witness Price.") (Rec. 2040.)

My exhibit No. 172-B is a statement of rates on crushed stone from Stockbridge and Lithonia, Ga. to points of destination located on the Southern Railway north of Atlanta, between Atlanta and the Tennessee state line. Stockbridge, Ga., is located on the Southern Railway just south of Atlanta, and Lithonia, Ga. is located on the Georgia Railway east of Atlanta. The junction point in handling this traffic would be Atlanta.

The distance from both Stockbridge and Lithonia to Byrd, Ga. is 80 miles, and the rate fixed by the Georgia Commission from both points to Byrd is 90 cents. It will be noted that this is also the rate that would apply under docket 17517 from Stockbridge, Ga., but if the 17517 rate [fol. 637] was applied from Lithonia the rate would be 105

cents, or a discrimination against Lithonia of 15 cents per ton.

The distance from both Stockbridge and Lithonia to Cohutta, Ga., is 145 miles, and the rate prescribed by the Georgia Commission from both Stockbridge and Lithonia to Cohutta is 120 cents. This is also the rate from Stockbridge to Cohutta under docket 17517. However, from Lithonia to Cohutta, docket 17517 would make a rate of 135 cents, or create a discrimination against Stockbridge of 15 cents per ton. (Rec. 2041.)

These discriminations against Lithonia are reflected throughout the exhibit.

Mr. Burchmore: We offer exhibit 172-B in evidence and ask that it be received.

Mr. Gwathmey: We note the same objection.

Exam. Waters: The objection is noted.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 172-B, Witness Price.")

My exhibit No. 173-B is a statement of rates on crushed stone from Stockbridge and Lithonia, Ga., to Southern Railway stations northeast of Atlanta, between Atlanta and the South Carolina state line, this exhibit showing the present rates as prescribed by the Georgia Commission, compared with the rates prescribed in I. C. C. Docket 17517.

It will be noted that Cornelia, Ga. is 97 miles from Stockbridge and 102 miles from Lithonia. The rate fixed by the Georgia Commission from both Stockbridge and Lithonia [fol. 638] to Cornelia under the 17517 scale. However, if the full 17517 scale applied from Lithonia, Ga. the rate would be 125 cents, or a discrimination against Lithonia of 25 cents per ton. (Rec. 2042.)

The distance to Gainesville, Ga. from Stockbridge is 72 miles, and from Lithonia, 77 miles. The present Georgia rate from both Stockbridge and Lithonia to Gainesville is 90 cents per ton, and this is also the rate from Stockbridge to Gainesville under docket 17517. However, docket 17517 would make the rate from Lithonia 105 cents, or a discrimination against Lithonia of 15 cents per ton.

These discriminations against Lithonia would be created under docket 17517 to all this territory.

Mr. Burchmore: We ask that this exhibit be received as exhibit 173-B.

Mr. Gwathmey: Same objection.

Exam. Waters: Same ruling.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 173-B, Witness Price.")

My exhibit No. 174-B is a statement of the present rates on crushed stone from Stockbridge and Lithonia to points of destination on the Southern Railway south of Atlanta, between Atlanta and Fort Valley, compared with the maximum rates prescribed in docket 17517. (Rec. 2043.)

This exhibit is similar to my previous exhibits and shows the discriminations against Lithonia in favor of Stockbridge if the docket 17517 maximum rates were made to apply as minimum rates in Georgia.

[fol. 639] Mr. Burchmore: We offer exhibit 174-B in evidence and ask that it be received.

Mr. Gwathmey: We note the same objection upon the ground of irrelevancy.

Exam. Waters: Same ruling.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 174-B, Witness Price.")

My exhibit No. 175-B is a statement of the present rates on sand from Rollo and Junction City, Ga. to points of destination on the Southern Railway northeast of Atlanta, between Atlanta and the South Carolina state line.

Rollo, Ga. is located on the Southern Railway south of Atlanta, between Atlanta and Fort Valley. Junction City, Ga. is located on the Atlanta, Birmingham & Coast Railroad due south of Atlanta.

The distance from Rollo to Suwanee, Ga., is 127 miles and from Junction City, 132 miles. The present rate fixed by the Georgia Commission to Suwanee from Rollo is 110 cents and from Junction City, 120 cents. (Rec. 2044.)

I. C. C. docket 17517 would fix a rate from Rollo to Suwanee of 120 cents, and from Junction City to Suwanee of 135 cents or a discrimination against Junction City of 15 cents per ton.

The distance from Rollo to Gainesville, Ga., is 149 miles, and from Junction City 154 miles. The present rate fixed

by the Georgia Commission from both Rollo and Junction [fol. 640] City to Gainesville is 120 cents. This is also the maximum rate that would apply from Rollo to Gainesville under docket 17517. However, docket 17517 would fix a maximum rate from Junction City to Gainesville of 140 cents, whereas the maximum rate under docket 17517 from per ton.

Attention is directed to the rates to Tugalo, Ga., the distance from Rollo being 192 miles and from Junction City, 197 miles. The present rate fixed by the Georgia Commission from both Rollo and Junction City to Tugalo is 140 cents, whereas the maximum rate under docket 17517 from Rollo to Tugalo would be 135 cents, or five cents less than the present Georgia rate.

On the other hand, docket 17517 would fix a maximum rate from Junction City to Tugalo of 145 cents, or create a discrimination against Junction City of 10 cents per ton, notwithstanding the fact that the present rate from Rollo to Tugalo would be reduced five cents per ton. (Rec. 2045.) These discriminations are reflected th-oughout this exhibit. Junction City to Atlanta shown as joint line haul should really be a single line 104. J 101 is the short line distance and is correct. The rate that would actually apply would be $1.10 and would not affect the rest of it at all. The distance from Rollo to Atlanta should be S-95.

(The same was thereupon received in evidence, subject to objection, marked, "GPSC Exhibit No. 175-B, Witness Price.") (Rec. 2046.)

My exhibit No. 176-B is a statement of the present rates on crushed stone as compared with rates under docket 17517 from Perry, Ga. and Oglesby, Ga. to points of destination [fol. 641] on the Central of Georgia Railroad east of Macon, on the line between Millen, Ga. and Savannah, Ga.

Perry, Ga. is located on a branch line of the Central of Georgia Railroad out from Fort Valley, just west of Macon. Oglesby, Ga. is located on the Seaboard Air Line Railway northeast of Atlanta, near Elberton, Ga. These quarries come in competition with each other, and traffic from Oglesby, Ga. to these points of destination should be delivered to the Central of Georgia Railroad at Athens, Ga. Perry was not names as a point of origin in Appendix A

to the decision of the I. C. C. in 17517. It has become a producer since that time, less than two years ago. (Rec. 2047.)

This exhibit shows the same differences and discriminations as are illustrated in my previous exhibits.

(The same was thereupon received in evidence subject to objection, marked, "GPSC Exhibit No. 176-B, Witness Price.")

My exhibit No. 177-B is a statement of the present rates on sand, compared with rates under docket 17517, from Columbus, Ga. and Howard, Ga., to points of destination on the Seaboard Air Line Railway on its Savannah and Montgomery division, between Cordele, Ga. and Savannah, Ga.

Columbus, Ga. is located 116 miles southwest of Atlanta, and is served by the Seaboard Air Line Railway. Howard, Ga., is located on the Central of Georgia Railroad, west of Macon, on the line between Fort Valley, Ga. and Columbus. The junction point on business moving from Howard to the points of destination shown, would be Americus, Ga. or Cordele, Ga.

[fol. 642] It will be noted that the distance from Columbus to Alamo, Ga. is 164 miles, and from Howard, Ga. 149 miles.

The present Georgia rate fixed by the Georgia Commission from Columbus to Alamo is 130 cents, and from Howard, 120 cents. If the maximum rates in docket 17517 were applied the rate from Columbus to Alamo would be 130 cents, or the same as the present Georgia rate, but from Howard, Ga. the rate would be 135 cents, or five cents per ton higher than the rate from Columbus, although the distance is 15 miles less. The distance from Columbus to Aults is 140 miles, and from Howard 134 miles. The present Georgia rate from both Columbus and Howard to Aults is 120 cents. This is also the maximum rate from Columbus to Aults under docket 17517, but if docket 17517 rates were applied from Howard, Ga. the rate would be 135 cents, or a discrimination against Howard of 15 cents per ton, notwithstanding the distance from Howard to Aults is 15 miles less than from Columbus. These discriminations are reflected throughout this exhibit.

Mr. Burchmore: We offer this exhibit in evidence as 177-B and ask that it be received.

Mr. Gwathmey: Same objection.
Exam. Waters: Same ruling.

(The same was thereupon received in evidence, marked, "GPSC Exhibit No. 177-B, Witness Price.") (Rec. 2049.)

Mr. Burchmore: In offering the series of exhibits which runs from 169-B to 177-B, it is not my contention that the [fol. 643] Interstate Commerce Commission has original or affirmative or direct jurisdiction to enter any order correcting or purporting to correct an unjust discrimination in violation of the principle expressed in section 3 of the Act, or to reduce an excessive rate in violation of the principle which is expressed in section 1 of the interstate commerce act; but it is my contention that in considering the order to be entered in a section 13 proceeding, or in a section 3 proceeding, which involves interstate rates on the one hand and intrastate rates on the other hand, it is not only the power but the duty of the Interstate Commerce Commission to consider the effect upon all shippers, state and interstate, of the order contemplated to be entered.

Mr. Cotterill: What is it you mean when you speak of "effect," Mr. Burchmore?

Mr. Burchmore: The resulting rates and relationships, and all other effects as far as that is concerned—the resulting rates and relationships and any other effects of the order.

Mr. Cotterill: Well, I don't know that there is any good in further discussing it.

Mr. Burchmore: I wanted to make it clear what my position was, and in addition the position that it supports the reasons or some of them assigned by the Georgia Commission in its order of March 13, 1928. (Rec. 2050.)

[fol. 644] Atlanta, Ga., November 28, 1928.

Before Exam. Waters

E. M. Price resumed the witness stand.

My exhibit No. 178-B is a statement of rates on sand, gravel and crushed stone to Atlanta, Ga. from various points of origin in Georgia, Alabama and Tennessee.

This exhibit shows the present rates as published by the carriers, also the maximum rates that would apply under docket 17517, and also what the rates would be under the Georgia scale as fixed by the Georgia Commission.

Particular attention is directed to the fact that the rate published and being charged from Montgomery, Ala. to Atlanta, is less than the maximum rate prescribed in docket 17517. (Rec., 2052.)

In my previous exhibits I have shown the gradation of the docket 17517 scale as compared with the Georgia scale prescribed by the Georgia Commission. At the distance between Montgomery and Atlanta the 17517 scale is graded 175 miles and over 150 miles, and 200 miles and over 175 miles. The maximum rate fixed in docket 17517 for 175 miles and over 150 miles is 130 cents, and for 200 miles, and over 175 miles, 135 cents.

The distance from Montgomery to Atlanta as published by the carriers at the time this exhibit was prepared was 178 miles. However, this tariff, Atlanta & West Point I. C. C. A-80, has been amended, and the present tariff distance is 176 miles. In any event, the maximum rate prescribed by the Interstate Commerce Commission in its docket 17517 from Montgomery to Atlanta, is 135 cents, although the rate published and being charged is 130 cents.

Jackson's Lake, Ala., Prattville Junction, Ala., Coosada, [fol. 645] Ala. and Litylene, Ala. are all located in the vicinity of Montgomery, Mitylene being located on the Seaboard Air Line and the other points on the Louisville & Nashville Railroad.

It will be noted from this exhibit that under the present adjustment these producing points have a disadvantage over Montgomery of 15 cents per ton; whereas, if the Georgia scale was applied from all this territory the rate from all of this group would be the same. (Rec., 2053.)

Attention is also directed to the fact that from Chehaw, Ala. and Chattanooga, Tenn. to Atlanta, the rates under the Georgia scale are the same as the present rates and the maximum rates that would obtain under docket 17517.

Mr. Burchmore: We offer this exhibit in evidence and ask that it be received, and in offering it I direct the Examiner's attention to the fact that it has no bearing on the contentions and matters that were covered by exhibits 169-B to 177-B, offered and received yesterday.

(Thereupon the statement was offered and received in evidence, without objection, and marked "GPSC Exhibit No. 178-B, Witness Price.")

Under the Georgia law, all rates prescribed by the Georgia Public Service Commission are maximum rates, and under the rules of the Georgia Commission may be reduced voluntarily by the carriers, provided, of course, in making such reductions, discriminations are not created. Generally speaking, the carriers have not reduced the rates applied in Georgia on sand, gravel and crushed stone below the maximum scale which was authorized by the Georgia Commission, effective May 1, 1928. I do recall in one instance [fol. 646] where the rate from Junction City, Ga. to Atlanta is published by the Atlanta, Birmingham & Coast Railroad in connection with the Atlanta & West Point Railroad via LaGrange below the full scale rate for the distance, and on the basis of the rate applying via the direct line of the Atlanta, Birmingham & Coast Railroad. The Central of Georgia Railroad also publishes rates from Junction City, Ga. to Atlanta the same as published by the Atlanta, Birmingham & Coast, the latter line being the direct line.

The rates fixed by the I. C. C. in docket 17517 are maximum rates, and our investigation shows that in many instances the carriers are publishing lower rates than the scale. (Rec., 2056.) As an illustration, the Atlanta, Birmingham & Coast Railroad, in connection with the Atlanta & West Point, publishes from Birmingham to Atlanta a rate of 130 cents per ton for a distance of 241 miles.

Mr. Cotterill: Mr. Burchmore, he started out and said, "as an illustration." The question I asked you is, is he going to present by way of exhibits the very many cases that he speaks of in his general statement, or is he going to present certain things? (Rec., 2057.)

Mr. Burchmore: I get the point of Mr. Cotterill's objection. I am willing to put it this way: Let the witness give his instances, let the record show that at this point you do not concede that they are anything but instances. If they are true, all right, they may be the only instances there are. When he has concluded with his instances, I shall ask him then to make a statement whether they are instances or ilustrative, and then we can deal with that question.

Mr. Cotterill: That will be all right. (Rec., 2058.)

[fol. 647] Q. Now, will you continue.

A. Whereas, the rate under the full 17517 joint line scale for this distance would be 160 cents.

The Atlanta, Birmingham & Coast Railroad also publishes from Birmingham to Atlanta a rate of 130 cents per ton to apply over its own line for a distance of 275 miles, although the 17517 scale for this distance will be 160 cents as maximum. This same line publishes from Birmingham to Union City, Ga. for a distance of 253 miles, 140 cents; whereas, the maximum rate under the 17517 scale is 150 cents. (Rec., 2059.)

A. The Atlanta, Birmingham & Coast Railroad publishes from Birmingham to Thomasville for a distance of 408 miles a rate of 175 cents; whereas, the full rate under the 17517 scale is 195 cents. This rate of 175 cents also applies to stations on the Atlanta, Birmingham & Coast Railroad north of Thomasville to Omega, Ga., except to Murphy and Rathasay, where the rate is made 180 cents, the distances from Birmingham to these stations ranging from 362 to 408 miles. The rates under the full 17517 scale would be 185 cents to all of these stations except from Thomasville to Dillon, and the rate to all stations between Thomasville and Dillon is 195 cents. It will be noted that the rates at Rathasay and Murphy are fourth section departures.

The distance from Birmingham to Savannah via the Louisville & Nashville Railroad to Montgomery and the Atlantic Coast Line beyond is 509 miles, and these lines publish a rate from Birmingham to Savannah of 200 cents, and this same rate is made to apply to local stations on the Atlantic Coast Line west of Savannah, to Fleming, Ga., a distance of 485 miles, whereas the 17517 scale for that mileage is 215 cents per ton.

[fol. 648] The distance from Birmingham to Ludowici, Ga., via the Louisville & Nashville and Atlantic Coast Line at Montgomery is 463 miles, and the rate published from Birmingham to Ludowici is 190 cents, although the 17517 scale provides a rate of 210 cents.

This same condition exists in connection with the rates from Birmingham to practically all Atlantic Coast Line stations in Georgia on its line between Montgomery and

Savannah. The rate published from Birmingham to Folkston, Ga., is 190 cents, although the rate authorized in docket 17517 in connection with Louisville & Nashville and Atlantic Coast Line via Montgomery is 210 cents. (Rec., 2061.)

The distance from Birmingham to Putney is 358 miles, via the Louisville & Nashville and Atlantic Coast Line at Montgomery, whereas the rate under docket 17517 is 180 cents. This same condition applies at all stations on the Atlantic Coast Line between Albany and Thomasville, Ga.

What I have just said in regard to rates published from Birmingham to stations in Georgia on the Atlantic Coast Line also applies with regard to rates published by the Central of Georgia Railroad from Birmingham to stations in Georgia on that line. The distance from Birmingham to Statesboro, Ga., located on the Central of Georgia Railroad east of Macon, between Dover and Brewton, is 402 miles, and the rate published by the Central of Georgia is 185 cents; whereas the 17517 scale is 195 cents. The distance from Birmingham to Adrian, via the Central of Georgia is 456 miles, and the rate published is 190 cents, although the 17517 scale makes a rate of 205 cents.

[fol. 649] What applies to Statesboro and Adrian applies to all stations on the Central of Georgia Railroad, between Dover and Brewton, the 17517 scale being reduced from five cents to 15 cents per ton. The actual rate is less then the 17517 maximum scale rate for the distance stated.

Eatonton, Ga. is located on the Central of Georgia Railroad northeast of Macon, on the line between Gordon and Covington, Ga. The distance from Birmingham to Eatonton via the Central of Georgia Railroad is 317 miles, the rate published is 160 cents; whereas the rate authorized under docket 17517 is 165 cents.

Willard, Ga. is located on this same line, and the distance from Birmingham is 321 miles. The rate published is 160 cents, although docket 17517 authorizes a rate of 175 cents. (Rec., 2065.)

Mansfield, Ga. is also located on this line, and the distance from Birmingham is 325 miles, the rate published by the Central of Georgia is 150 cents, although docket 17517 authorizes rate of 175 cents.

This condition exists at all stations on the Central of Georgia between Gordon and Covington, that is, the rates

published are less than the rates authorized in your docket 17517. (Rec., 2066.)

The distance from Birmingham to Atlanta via the Central of Georgia Railroad is 304 miles, and the published rate in Glenn's Tariff from Birmingham to Atlanta via the Central of Georgia Railroad is 130 cents per ton and the docket 17517 scale rate for that distance is 165 cents. Hampton, Ga. is a local station on the main line of the Central of Georgia R. R. between Atlanta and Macon. According to the Central of Georgia Tariff, the distance from Bir- [fol. 650] mingham to Hampton is 271 miles and the published tariff rate in Glenn's Tariff over the Central of Georgia R. R. from Birmingham to Hampton is 145 cents, while the docket 17517 maximum rate for a distance of 271 miles is 160 cents. (Rec., 2070.)

Q. Is what you have said with regard to the distances and the rates to Hampton, Ga. illustrative of the rates and distances to stations on the Central of Georgia Railroad on its line between Macon and Birmingham, as to the difference between the docket 17517 full scale rate and the rate that is published in the tariff?

A. You mean between Macon and Atlanta?

Q. To destinations between Macon and Atlanta?

A. From Birmingham?

Q. Yes.

A. It is. (Rec., 2071.)

By Mr. Walker:

Q. From your statement, Mr. Price, do you mean that the rate that applies over the short line from Birmingham to Atlanta also applies via the route of the Central of Georgia?

Mr. Burchmore: To where?

Mr. Walker: To Atlanta.

The Witness: That is true.

Q. It applies via the Central of Georgia?

A. Yes sir.

Q. For what distance?

A. For a distance of 271 miles.

Mr. Caskie: The tariff does not permit it. (Rec., 2073.)

[fol. 651] By Mr. Burchmore:

I can take Glenn's Tariff and give authority for my statement of the rate from Birmingham to Atlanta via the Central of Georgia. J. H. Glenn's I. C. C. A-655 contains a specific rate on sand and gravel and so forth from Birmingham and Atlanta and the rate specifically in that tariff is 130 cents per ton. The Central of Georgia R. R. is a party to that Tariff. (Rec., 2073.)

I find in that Tariff an exception against the application of that specific rate from Birmingham to Atlanta via the Central of Georgia, that that rate would not apply over routes having distances in excess of 255 miles. The distance from Birmingham to Atlanta is 304 miles.

Mr. Burchmore: The witness was erroneous in his previous statement that the rate was 130 cents to Atlanta.

I find that the Glenn Tariff states that the rate on a carload of sand or gravel moving over the Central of Georgia R. R. all the way from Birmingham to Atlanta would be the scale rate, which is 165 cents. The distance of the Central of Georgia from Birmingham to Athens is 364 miles. (Rec., 2074.)

The rate published from Birmingham to Athens over the Central of Georgia is 150 cents and the maximum scale rate under docket 17517 for 364 miles is 185 cents.

The distance from Birmingham to Shadydale, Ga. is 313 miles, and this station is intermediate on the Central of Georgia between Birmingham and Athens, and the rate published is 160 cents, although docket 17517 authorizes 163 cents.

[fol. 652] It will be noted there is a fourth section departure at this point, and this condition also applies at all stations on the Central of Georgia between Shadydale and Athens, and in each instance the rates published are from five cents to 35 cents less than the rates authorized in docket 17517.

What I have just said in regard to the rates applying to the Central of Georgia on its line between Macon and Athens also applies on its line between Barnesville and Thomaston, Ga., a branch line just north of Macon. The distance from Birmingham to Thomaston is 295 miles, the rate published being 150 cents, although the rate authorized under docket 17517 is 165 cents. (Rec., 2075.)

We find the same condition existing on the line of the Central of Georgia on its line between Griffin and Chattanooga. On this line the distance from Birmingham to Mandeville, Ga. via the Central of Georgia is 268 miles, the rate published 125 cents, although docket 17517 authorizes a rate for this distance of 160 cents, the rate published being 35 cents per ton less than the rate authorized.

The distance from Birmingham to Breman, Ga. via the Central of Georgia is 274 miles, and the rate published is 110 cents, although the rate authorized by docket 17517 for this distance is 160 cents.

This same condition exists at all stations on this division.

By Mr. Cotterill:

Q. Mr. Price, where you just spoke a moment ago of rate authorized, did you mean in that connection authorized for that distance?

A. Yes sir.

By Mr. Burchmore:

Q. Wherever you say authorized, you mean for that distance?

[fol. 653] A. Yes sir. (Rec., 2076.)

A. Pretross, Ga. is a local station on the Georgia & Florida Railroad, which is a relief line. The distance from Birmingham to Petross via the Central of Georgia to Midville, and the Georgia & Florida, is 403 miles. The rate published is 180 cents, although the rate authorized in docket 17517 for this distance is 200 cents.

The distance from Birmingham to Crenshaw, Ga., which is also a local station on the Georgia & Florida Railroad, is 482 miles via the Central of Georgia and the Georgia & Florida. The rate published is 180 cents, although docket 17517 authorizes a rate for this distance of 215 cents.

In other words, the rate published via this route is 35 cents per ton less than the rate authorized in docket 17517 for the distance.

This same condition exists to practically all stations on the Georgia & Florida Railroad, the rates published being 10 cents to 35 cents per ton less than the rate authorized in docket 17517 for the distance. (Rec., 2077.)

By Exam. Waters:

Q. Does what you have just been giving here show illustrations generally speaking of where longer routes are meeting the rates made by short routes?

A. I would put it this way, Mr. Examiner, that the short line distance, that is the short distance may be computed via another route. (Rec., 2078.)

Q. Which determines the rate?

A. Which possibly would determine the rate.

By Mr. Gwathmey:

Q. It must determine the rate, don't you mean?

A. But the distances which I am giving are the distances via which the rates are published.

Exam. Waters: Generally by fourth section relief, in a great many instances. If everybody admits generally, Mr. [Vol. 654] Burchmore, that that is what he is showing here, and it is generally admitted that that condition exists, then why don't you confine your testimony more to pointing out instances where the scale is actually violated?

Mr. Burchmore: Well, I discussed with Mr. Price, some general testimony, and we rather agreed that the statements he would make and the conclusions he would draw be objected to, and to avoid any such objection and to be precise, and not to drawing conclusions, I am having him here give instances of certain things where certain facts are true. Now, any argument to be made about that on either side can be made from those facts. There are in these instances that he is giving other things than that covered by the suggestion of the other side. I do not want to burden the record. Mr. Price prepared these memoranda, they are his own instances. (Rec., 2079.)

Mr. Cotterill: Mr. Burchmore, would this be any aid, having before you the stipulation of counsel that what you have given fully illustrates the fact that under the rule of rate making prescribed by the Commission in its interstate decision, there are hundreds, perhaps even thousands of instances in which the maximum scale is departed from over routes which are longer than the routes via which the distances are computed? Now, with that before you wouldn't it be possible for you to accept that stipulation

as proving that fact? Now, if in addition there is something else that you wish to prove, then have your illustrations directed to those other things.

Mr. Burchmore: I will make two suggestions in the interest of saving time, either of two suggestions. With your indulgence I would like to take three or four minutes to check over our other illustrations with Mr. Price, to see whether there is something that we ought to get in.

[fol. 655] Exam. Waters: I think that would be advisable. We will take a recess for that purpose.

(Short recess.)

Mr. Burchmore: Mr. Examiner, I would like to have it understood in any form that may seem reasonable to the examiner, that within a short time Mr. Price will file with the Commission, or I will file for him and serve on the other parties, any corrections he has made with respect to this feature of the case which upon recheck of the tariffs and the mileages he finds necessary. I do not think it necessary to ask it except in the interest of fairness I should do so, and have it understood that on this feature of the case and our showing as a whole that the carriers or opposing parties may within a reasonable time present an exhibit or statement in rebuttal or correction of this feature of the case.

Mr. Gwathmey: You mean the carriers should have that opportunity after Mr. Price has submitted his statement?

Mr. Burchmore: Yes sir.

Mr. Gwathmey: That suits me all right.

Mr. Walker: It is understood that the corrected statement furnished by Mr. Price will only cover matters about which he has given testimony.

Mr. Burchmore: It will be purely corrective of any misstatement he may have made here, and I would hope that there is nothing to file.

Exam. Waters: You are going to file a statement, if you find errors, is that it? (Rec., 2082.)

Mr. Burchmore: If he finds that he has misstated facts as to these situations.

[fol. 656] Exam. Waters: Mr. Price, you will be given 10 days in which to get that statement to the Commission. The carriers and other parties who wish to file a rebuttal statement will have 10 days from the time of the filing with the Commission of Mr. Price's statement.

My exhibit No. 179-B is a statement of rates on sand and gravel from Montgomery, Ala. and Mitylene, Ala. to Thomasville, Ga. and stations on the Atlantic Coast Line Railroad between Albany and Thomasville.

My previous exhibits have shown the inconsistency and discriminations that would be created between Georgia shipping points if the maximum rates in docket 17517 were made to apply in Georgia. (Rec., 2084.)

The purpose of this exhibit is to show the inconsistencies and the fourth section departures that are now being practiced on interstate traffic.

This exhibit also shows that if the Georgia scale was applied these inconsistencies and fourth section departures would be removed.

The single line distance of the Atlantic Coast Line Railroad from Montgomery to Thomasville, Ga. is 211 miles, and the rate is 140 cents. The short line distance from Montgomery to Thomasville is 207 miles, in connection with the Central of Georgia and the Seaboard Air Line Railway through Albany in connection with the Atlantic Coast Line, and it will be noted that the Georgia scale for this distance is also 140 cents.

The distance from Montgomery to Petty, Ga., Joint Line in connection with the Seaboard Air Line and Atlantic Coast Line, through Albany, is 179 miles, and the rate published is 145 cents, or five cents higher than the rate to [fol. 657] Thomasville, Ga., notwithstanding the fact that Petty is intermediate between Montgomery and Thomasville via this route, and the distance is 28 miles less, and a rate of 140 cents is being published by the Seaboard Air Line from Montgomery to Thomasville. (Rec., 2084.)

The distance from Montgomery to Albany via the Atlantic Coast Line Railroad is 269 miles, and the Atlantic Coast Line publishes a rate of 130 cents. Thomasville is intermediate between Montgomery and Albany via the route of the Atlantic Coast Line, and a rate of 140 cents is published from Montgomery to Thomasville.

Mitylene, Ala. is located on the Seaboard Air Line Railroad, nine miles east of Montgomery, and is intermediate between Montgomery Albany and Thomasville. The Seaboard Air Line Railway publishes a rate of 140 cents from Montgomery to Thomasville, and from Mitylene, Ala. the intermediate point, publishes a rate of 150 cents. These

fourth section departures are reflected at all points on this line between Thomasville and Hanzel, Ga., inclusive.

It will be noted that if the Georgia scale was applied these inconsistencies and fourth section departures would not exist.

Mr. Burchmore: We offer exhibit 179-B, and ask that it be received.

Mr. Gwathmey: If the Examiner please, I wish to note an objection to the receipt of this exhibit upon the ground that insofar as it purports to show and is offered for the purpose of showing discriminations as between particular interstate shipping points and destinations, that matter is not at issue in this proceeding under the present state of the pleadings. (Rec., 2085.)

[fol. 658] Exam. Waters: Your objection is fully noted.

Mr. Cotterill: Of course, I am concurring in that objection.

Exam. Waters: The exhibit is received subject to the objection.

(The same was thereupon received in evidence subject to objection, marked "GPSC Exhibit No. 179-B, Witness Price.")

A. My exhibit No. 180-B is a statement of rates on sand and gravel from Montgomery, Ala., to destinations on the Atlanta, Birmingham & Coast Railroad, between Cordele and Fitzgerald, Ga., inclusive. Both the Seaboard Air Line Railway and the Atlanta, Birmingham & Coast Railroad serve Fitzgerald, Ga., which is just south of Cordele, Ga.

The rate from Montgomery to Fitzgerald is 140 cents, whereas it will be noted that the rates to all intermediate stations from Westwood to McKenzie, Ga. are higher than the rate to Fitzgerald, which is a departure from the fourth section, and a discrimination against these intermediate points in favor of Fitzgerald.

At Westwood the distance from Montgomery is 205 miles, and the rate 150 cents, whereas, at Fitzgerald the distance is 206 miles, and the rate 140 cents, or 10 cents less than to Westwood. (Rec., 2086.)

Mr. Burchmore: We offer exhibit 180-B in evidence, and ask that it be received.

Mr. Gwathmey: We make the same objection.
Exam. Waters: Same ruling.

(The same was thereupon received in evidence, subject to objection, marked "GPSC Exhibit No. 180-B, Witness Price.") (Rec., 2087.)

The order of the Georgia Commission entered March 13, 1928, does not prescribe any formula for arriving at distances. It is a maximum scale prescribing rates for the distances shown in the scale. (Rec., 2087.)
[fol. 659] The order and the rule of the Georgia Commission make no provision for the application of the scale as prescribed to the shortest rail distances by which traffic can be moved without transfer of lading in order to determine the rate that shall apply. (Rec., 2088.)
Generally speaking the rates within the state of Georgia for the transportation of these materials are not published as specific point to point rates. The Tariffs do contain a rule defining *the* how the scale will be applied. That is, what mileage may govern. Yes sir, the Tariff is filed with the I. C. C. and is Agent's Glenn's Tariff I. C. C. A-529, Freight Tariff No. 33. The rules I consider applicable to your question are Note 2 at page 16-A. (Rec., 2089.)

Mr. Burchmore: May that rule or this paragraph be read into the record? I raised the question with the Examiner and counsel. Is it desirable to read this into the record, or may we rely on the tariffs?
Exam. Waters: I think it is sufficient to rely on the tariffs.
Mr. Burchmore: Very well.

By Mr. Burchmore:

Q. Mr. Price, Mr. Crane calls attention to the fact that the rule you have referred to appears to have been carried forward with possible modification on page 4 of supplement 16 to that tariff. Have you checked it to see whether the rule is substantially altered or not?

Mr. Burchmore: I think if the record calls attention to that fact, we may take it as understood that the reference is to the correct rule.

Q. What, it any, opinion have you as to the reasonableness of the Interstate Commerce Commission's scales of

maximum rates known as the 17517 scales, as applied to the present and future movement of sand, gravel, crushed stone, and so forth, to all—from points in the state of [fol. 660] Georgia to points in surrounding states, and in the reverse direction, interstate movements, and what, if any, facts have you to present in support of that opinion?

Mr. Walker: The question is objected to on the ground that the reasonableness of the interstate scale is not in issue in this proceeding.

Mr. Caskie: Complainants concur in that objection.

Mr. Walker: We certainly are not going into the reasonableness of the scale that has been prescribed by the Commission.

Mr. Burchmore: I would say, Mr. Examiner, if you feel that the question is objectionable on that ground, and would be inclined to sustain it, I would not ask for the State of Georgia that you refrain from making that ruling out of any comity or indulgence to us. I would like a ruling from your Honor on it based on your interpretation of the case and the issues, and so forth, because if you permit it to be answered our testimony will be perhaps rather extensive.

Exam. Waters: I realize the importance of the question. The final determination of whether it is pertinent or not would have to be answered by the Commission. For that purpose and for what it is worth here, I am going to let it be answered.

Mr. Walker: We reserve our exception. (Rec., 2091.)

The Witness: It is my opinion that the rates authorized by the Interstate Commerce Commission in its docket 17517 on sand, gravel, crushed stone, and so forth, are, to say the least, very full maximum rates to be applied interstate in this territory. This record shows the rates that were in effect prior to April 1, 1925, at the time the Georgia Commission first revised its rates in Georgia, and contains exhibits showing the rates that were voluntarily established [fol. 661] by the carriers between some of the most important consuming points of these materials, and these voluntarily established rates were far below the rates which have been prescribed in docket 17517.

I also feel, and it is my opinion, that any schedule of rates that will fix a rate for a distance of 150 miles or 160 miles, and is so full that it warrants the carrier in han-

dling that traffic for a distance of 200 miles or a much greater distance, certainly represents what I consider a full maximum rate. The rates fixed by the Commission in this docket 17517 are to be applied via the route where carload traffic may be transferred or interchanged without the transfer of lading, and is then inflated so as to permit the movement of that traffic via longer routes than this short or rate making route. (Rec., 2092.)

[fol. 662] Mr. Burchmore: One behalf of the Public Service Commission of Georgia, I respectfully ask that the defendants shall furnish, in order that it may be incorporated in the record as a part of our case, a statement of the tonnages of these materials moving during a representative period in 1928, but not less than four months, by each of the railroad routes separately stated, from Montgomery to Atlanta, and will use those tonnages when they are furnished for the computation of the revenues on the actual rates and what the revenues would be if the scale rates for the distances of the respective routes were applied, so that as a part of my request I leave it optional with the carriers whether they show the actual revenues in addition to showing the tonnages. I ask for that information from the defendants.

Mr. Gwathmey: Our objections to furnishing that information have been stated heretofore in the record, Mr. Examiner. I suppose it is unnecessary to repeat that at this point.

Mr. Cotterill: I did not do so before, but since counsel is formally renewing his request, I suppose I should not longer refrain from saying on behalf of the Montgomery shippers whom I represent, we give notice to the carriers that we would regard the production of that information as violative of the Interstate commerce act, and should decline to permit them to make it available. (Rec., 2093.)

Mr. Burchmore: For how many shippers at Montgomery do you speak?

Mr. Cotterill: At this time the Roquemore Gravel Company and the Alabama Sand & Gravel Company.

Mr. Burchmore: Would you object if the figures were, [fol. 663] as the request calls for, simply the totals of all the shipments of all of the shippers from Montgomery?

Mr. Cotterill: Yes.

Mr. Burchmore: Without naming the shippers, and with no details of any character, but I want to know how many moved over the West Point route, how many moved over the second route, how many moved over the third route, how many moved over the fourth route, and the other routes between the cities, where the distances on the different routes are of course different.

Mr. Cotterill: I would have no objection from my point of view to the proportion being given, but not the absolute tonnages. (Rec., 2094.)

Mr. Burchmore: I want the absolute tonnage.

Mr. Caskie: Speaking for the only other shipper at Montgomery, I concur in what Mr. Cotterill has said.

Exam. Waters: What were you asking for, Mr. Burchmore, to Atlanta, or all points in Georgia?

Mr. Burchmore: The answer would be something like this: The answer would be that during the months of January to April, inclusive, or June to October, inclusive, a four months period, the Atlanta & West Point and Western of Alabama route handled 196,000 tons of sand and gravel from Montgomery to Atlanta, or 490,000 tons, or whatever the figure is, and in addition they may state that the revenue thereon was so many thousand dollars, or refrain from stating that, as they choose. They would then state that the Central of Georgia Railroad during that period, from Montgomery to Atlanta, handled a total of so many tons; and so on for each of the routes that handled any substantial tonnage.

Exam. Waters: Personally I have never seen a great deal of objection to furnishing that information, but the carriers and Mr. Cotterill's clients do not feel that they [fol. 664] should do it. I am not going to require them to do it, or attempt to require them.

Mr. Burchmore: It will then be my purpose to file a formal written motion with the Commission that these defendants be directed to furnish the information. (Rec., 2095.)

Exam. Waters: I understand that they are willing to furnish the movement from Montgomery, the volume of movement to all points in Georgia.

Mr. Gwathmey: I so stated on yesterday. Of course, that is subject to any objection that the Montgomery shippers

might make. I don't know whether they would object to that or not.

Mr. Cotterill: I think there would be no objection to that. I have not had a chance to discuss it with Mr. Roquemore.

Mr. Burchmore: I have no objection to that being furnished for any railroad, but I am not asking for it, and have no desire to have it.

Mr. Cotterill: Then there will be no need to furnish it. (Rec., 2096.)

[fol. 665] In exhibit 103-B, Mr. Crane, for the Southern Railway, shows the present rates and what purport to be the scale rates from Junction City on the Atlanta, Birmingham & Coast and Central of Georgia Railroads, to Atlanta.

The order of the Georgia Commission authorizes a rate of $1.00 per ton from Junction City to Atlanta for the short line distance of 101 miles, which is the joint line distance, and also the same rate for the single line distance of the Atlanta, Birmingham & Coast for 104 miles. The order of the Georgia Commission permits, but does not require, this rate of $1.00 per ton via the Central of Georgia, single line, for 166 miles, and over the other longer routes referred to on the exhibit. (Rec., 2096.)

Exhibit 103-B shows that the four interested carriers have choosen to publish the rate of $1.00 by all the routes from Junction City to Atlanta.

If the transportation from Junction City to Atlanta happened to be interstate, across a state line, then under the terms of the Interstate Commerce Commission's order in docket No. 17517 the maximum rate that the carriers could charge over any of these routes from Junction City to Atlanta would be $1.00, as I construe that order.

The present rates as show- on this exhibit 103-B, which are lower than the amounts shown as the Georgia scale, have been voluntarily published by the carriers and not required by the Georgia Commission's order.

What I just stated in regard to rates from Junction City on exhibit 103-B also applies as to the rates shown on this exhibit from Howard, Ga. (Rec., 2097.)

[fol. 666] On exhibit 108-B, Mr. Crane shows the distance from Chattanooga, Tenn. to Atlanta as 137 miles, via Nashville, Chattanooga & St. Louis Railroad. But the actual

distance over the Southern Railway from Chattanooga to Atlanta is 153 miles. The docket 17517 maximum scale rate for that distance single line is $1.30.

The exhibit 108-B fails to show this rate or the fact that the Southern Railway hauls sand and gravel from Chattanooga to Atlanta and charges 10 cents less than the 17517 scale would produce for the distance hauled. The present rate from Gaillard, Ga. to Atlanta, intrastate, is on the full maximum of the 17517 scale.

Many illustrations along the same line can be drawn from Mr. Crane's exhibits.

On all of Mr. Crane's exhibits the mileages show in connection with the interstate movements generally appear to have been computed over the shortest route over which carload traffic can be moved without transfer of lading, and in many cases these routes that actually handle the traffic and would short haul the initial and delivering carriers.

For example, on exhibit 130-B, page 4, from Mascot, Tenn. to Mt. Pleasant, Ga. Mr. Crane has used 478 miles, via route shown, which is Southern Railway, Seaboard Air Line, Southern Railway. This could be reached by the Southern Railway direct and undoubtedly the traffic would move single line over the Southern Railway. But the 17517 maximum rate has been figured over the route which short hauls the Southern Railway. (Rec., 2098.)

In connection with exhibit 114-B, Mr. Crane commented on the treatment of Southern Railway; Georgia, Southern & Florida Railway, joint movements as subject to single line rates. He state- that in the application of the 17517 maximum scale of interstate rates the two roads were treated as a single line.

[fol. 667] That is not true of state traffic in Georgia. The United States District Court enjoined the Georgia Commission several years ago from treating the Georgia, Southern & Florida Railway as a part of the Southern Railway System for rate making purposes, and under this injunction the joint line basis is applicable intrastate in Georgia on traffic handled by these two roads.

I am not qualified to testify as to the ownership of the Georgia, Southern & Florida Railway, but they report separately to the Georgia Public Service Commission.

Mr. Burchmore: In respect to this last statement of the witness, we are not in position to offer proof as to the

ownership and management of the Georgia, Southern & Florida Railway at this time, but I ask counsel for the (Rec., 2099) Southern Railway Company whether it is true that the Georgia, Southern & Florida Railway Company is a Georgia Corporation of which somewhere between 50 and 75 per cent of the shares of the capital stock are owned by the Southern Railway Company; that the Georgia, Southern & Florida Railway Company has corporate officers and has a board of directors some of whom may be officers and some of whom may be directors of the Southern Railway System, but who are elected and appointed by the Georgia, Southern & Florida Railway Company as a separate, distinct corporation; and whether it is also true that the Georgia, Southern & Florida Railway Company keeps separate books, separate accounts and a separate organization not intermingled with the Southern Railway Company?

Mr. Walker: The only portion of that question that I can answer is that there is some connection between the Georgia, Southern & Florida and the Southern Railway, the extent of which I do not know. I also know that some of the officers of the Georgia, Southern & Florida are also officers of the Southern Railway Company. (Rec., 2100.)

[fol. 668] Referring to my Exhibit No. 169-B, if there were a plant at Stockbridge and at Norris, both producing cement which each shipped in carloads to destinations shown on that exhibit, including McRae, and if the cement rates prescribed by the I. C. C. for use in Southeastern Territory were applied, the rates would be the same from both points. There is a common scale prescribed by the I. C. C. on cement that applies both joint and single line. These same statements apply to my other exhibits 170-B to 177-B. (Rec., 2101.)

By Mr. Watkins:

From my experience in rate work, I regard it an inconsistency to make the rate of progression from 150 to 175 miles, 10¢, and from 175 to 200 miles, and from 200 to 230 miles, only 5¢; especially since the rate of progression picks up again to 10¢ at 260 and over 230 miles, and then drops again to 5¢ for the 30 mile block between 290 and 320 miles, and then jumps to 10¢. The inconsistency would not be so great if the 5¢ progression were continued on through the

balance of the scale, but in my opinion it is an inconsistency where you have fixed constant mileage blocks. (Rec., 2102.)

Cross-examination.

By Mr. Cotterill:

Mr. Price, I have before me an excerpt from an exhibit introduced in the case by the secretary of your Commission, consisting of a statement of the considerations which prompted the Public Service Commission of Georgia to the course which it took in this matter. I wish very briefly to interrogate you with respect to one phase of it that is within your knowledge. Among other things it is stated that the investigation made by the Georgia Public Service [fol. 669] Commission shows very keen competition between the producers of all the materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with the producers in Alabama, Tennessee, and South Carolina. Do you of your own knowledge know whether or not that is a fact?

A. Only from the evidence, Mr. Cotterill. I am not in the sand and gravel business, neither is the Georgia Commission.

Q. But such was the evidence before that Commission?

Mr. Burchmore: Just a moment, wait a minute. Is it material, Mr. Cotterill, to your question, to ask what was the evidence before the Commission, or do you want the fact? I would a little prefer to have it speak for itself. Now, he has not, as far as I know, testified what the evidence was before the Georgia Commission. The record before the Georgia Commission I assume is available to you. If it is material to your question I shall have to object. I will stipulate the fact if you want that (Rec., 2103).

Mr. Cotterill: You will stipulate the fact that there is that keen competition as stated in the decision of the Georgia Commission?

Mr. Burchmore: Yes, it is agreed that there is a very keen competition between the producers of Georgia among themselves, and with Alabama, and interstate.

Mr. Watkins: So far as the clients that I represent are concerned, I do not agree that that is universally true.

There are places in Georgia where there is competition between the Georgia shipper and the interstate shipper, and there are places in Georgia where there is no competition between the Georgia shipper and the interstate shipper.

[fol. 670] Mr. Burchmore: Well, that is what I mean, and I think Mr. Cotterill meant that. He would not mean that in the extreme northeastern corner of Georgia that all Georgia producers compete with Alabama producers, for instance.

Mr. Cotterill: I did not mean to limit my question, and practically had hoped either that a concession would be made by counsel, or that the witness would say that this statement of the Georgia Public Service Commission, being unqualified to any territorial extent whatsoever, is true (Rec., 2104).

Mr. Burchmore: Well, I am insisting that the report and everything in it is true.

Mr. Cotterill: Well, if you insist that everything said in that opinion is true, that—then you do concede that the statement is true, namely, that there is keen competition throughout the state?

Mr. Burchmore: The statement as made I concede to be true (Rec., 2105).

Exam. Waters: The report has that in it, and answers the question, and speaks for itself. It is the Georgia Commission's report, and certainly will be taken into consideration in this case (Rec., 2107).

Mr. Cotterill: I ask the witness again what if any fact within his knowledge suggests to his mind a justification for charging different single line rates on the commodities her- involved as between state and interstate traffic?

Exam. Waters: He may answer the question if he can.

The Witness: Mr. Cotterill, I can only answer that with the exhibits and testimony that I have submitted in this case (Rec., 2112).

[fol. 671] By Mr. Burchmore:

Q. You as a rate expert connected with the Georgia Railroad Commission, and enjoying advantages of experience and observation and the contact that that position gives you, do you individually feel that when a shipment of sand and gravel crosses the Georgia-Alabama state line it should by reason of that fact, or by reason of any other fact—or,

by reason of that fact, that it should pay any higher of lower or different rate than if under the identical distance and other conditions it did not cross the state line? (Rec., 2113).

A. No.

By Mr. Cotterill:

Q. Mr. Price, in its decision of January 21, 1927, docket 17517 and consolidated cases, the Interstate Commerce Commission stated as follows at page 169:

"There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation."

I will ask you whether you know of any fact which to your mind suggests an inaccuracy or an error in that conclusion?

Mr. Burchmore: Just a moment before he answers. I object to that question on two grounds. The first ground is that the witness has not been qualified and has not testified as a transportation witness dealing with transportation questions other than the particular transportation questions that he has covered on his direct, namely, the distances and the names of the carriers serving the points and the locations of certain industries, what I would call physical facts. He has not been qualified as a witness competent to testify in regard to so called operating and transportation questions separated from traffic matters (Rec., 2116).

[fol. 672] Secondly, that it calls for a conclusion of the witness which would be in effect a review of an substitution of his judgment for the expressed judgment of the Interstate Commerce Commission on a record made in the year 1926.

Exam. Wafers: With all these objections noted, you may answer the question, Mr. Price, if you can (Rec., 2117).

I don't know of any difference in intrastate transportation conditions.

By Mr. Gwathmey:

It is my understanding that the I. C. C. in Docket 17517 granted relief in its Fourth Section orders to the carriers

from the provisions of the long and short clause of the Act, with certain limitations, and it is also my interpretation of that order that the rule for computing distances which the Commission set out at page 166 of that report is as much a part of the Commission's findings and decision as any other part of the report and order and the carriers are bound by that rule and must observe it. I should have to make a complete check of all my exhibits to determine whether I know of any instance respecting the interstate rates into Georgia in which the 17517 basis has not been applied by the carriers. For the moment I cannot give you a single instance where the rates were not according to Docket 17517 basis, excepting the rate from Montgomery to Atlanta (Rec. 2118).

[fol. 673] I doubt very much that I could point out as many instances respecting the intrastate traffic as I did respecting interstate traffic which I thought tended to show a departure from the 17517 basis. It would require a complete check to check out that situation in Georgia because point to point rates are not published in Georgia. You publish a mileage scale which is subject to certain rules of your tariff that were not required by the Georgia Commission. The Georgia Commission does not require you to protect a rate between two given points other than via the rate making route. You are permitted to do that voluntarily and your tariff provisions make it so. But to pick out points from here to there and beyond is a condition I do not think you would find as prevalent in Georgia as it is interstate (Rec., 2119).

The provision in that order governing the Georgia carriers in computing distances and rates in their tariffs was filed by the Georgia carriers with the Georgia Commission and accepted and not disapproved by the Commission because it reflects the deductions. I stated in my direct testimony that I don't recall but two instances in Georgia where the carriers have varied from the Georgia scale, and that was the Junction City-Atlanta case, the Central of Georgia, the A. B. & C. and Atlanta & West Point. There may be others that may be picked out by apply- the rule in Glenn's Tariff (Rec., 2120).

[fol. 674] The order of the Georgia Commission permits the non-observation of the long and short haul rule, whereby a circuitous route is authorized to meet the rate of a

short route in Georgia, and it also permits the charging of a higher rate at intermediate points.

The rule of the Georgia Commission is entirely different from the rule for computing mileages as fixed by the Interstate Commerce Commission in docket 17517; in that under 17517 a carrier is required to compute the rate via the shortest route, the rate making route, and via junctions where carload traffic may be interchanged without the transfer of lading, and that becomes the rate regardless of how you move the traffic; as I understand the order, you have no option in the matter. The Georgia Commission's order does not require that.

Mr. Burchmore: Well, in fairness—I did not interrupt your questions, Mr. Gwathmey (Rec., 2121), but I want to point out a feature of our contention there with you may have the witness comment on fully, and which I do not think from the questions is understood, and that is that the 17517 scale of rates as promulgated by the Interstate Commerce Commission is a scale that sets forth certain rates opposite certain distances, which is in its actual application substantially discounted on the actual movements, in contrast to which the scale put in by the Georgia Commission is a scale that actually applies in general practice, and with extremely limited deviations of the actual routes, and Mr. [fol. 675] Price has pointed out in his direct — the facts that I think draw that distinction. That is our position, and it is the position that relates to the statements made by Mr. Comm. Eastman in the general Southern Class Rate case with regard to the differences between figuring short line tariff routes and short line routes that move traffic on the one hand, and by using these very short routes that represent the minimum rail distance without transfer of lading.

By Exam. Waters:

The rate under the Georgia Commission's order is fixed in this way (Rec., 2122):

If that rate fixes $1.00 for 100 miles, the carriers are permitted to charge that rate for that 100 miles, regardless. The rate between two given points, or rather the distance between two given points, may be less than 100 miles, and a lower rate might be made. I can illustrate that, Mr. Ex-

aminer, in this way: The Southern Railway from Atlanta to Macon is the short line distance, and for competitive reasons is considered the rate making line. The Central of Georgia line is slightly longer, about 13 miles longer. The Georgia Railroad also has a line from Atlanta to Macon which is very circuitous. There is nothing in the rules or any order of the Georgia Commission that will require the Central of Georgia to operate the same rate from here to Macon that is made in connection with the Southern Railway mileage, or that requires the Georgia Railroad to handle traffic from Atlanta to Macon via its circuitous route on the short line mileage. They are permitted to go out of that [fol. 676] business if they so desire, or stay in it if they so desire. If I understand the 17517 order correctly, on the illustration just made from Atlanta to Macon, the Southern Railway would fix the rate from Atlanta to Macon and that would then become the rate via the Georgia R. R., or the Central of Georgia R. R. (Rec., 2123).

By Mr. Gwathmey:

I understand those other routes would be required to meet the rate if they handled the business (Rec., 2124). Yes, sir, the discrimination shown by my exhibits results between shippers on the single lines on the one hand and shippers on the joint line hauls on the other, and I regard that an undue discrimination (Rec., 2125).

Q. Does not that same discrimination exist today as against interstate shippers into Georgia and in favor of intrastate shippers in Georgia?

A. Well, that is a matter that the Interstate Commerce Commission will have to decide.

They will have to decide that. I am speaking now as to the rates in Georgia, that is what you asked me about. The dollar rate published by the Central of Georgia from Junction City to Atlanta, was published after correspondence between the Railroad and the Georgia Commission, which correspondence was initiated as a result of complaints received by the Commission from shippers in the vicinity of Junction City on the Central of Georgia (Rec., 2126). There is no physical connection between the A. B. [fol. 677] & C. and the Central of Georgia at that point, and I was directed by the Commission to handle the mat-

ter with the Central of Georgia, and suggest that the Commission's opinion was that the rate should be no higher than those pits on the Central of Georgia than the rate that would obtain if there was an actual connection at Junction City.

By Mr. Brooker:

The short line distance from Junction City to Atlanta via the A. B. & C. and the Southern is 101 miles (Rec., 2127), and the Georgia Commission's mandatory rate for that distance is a maximum of $1.00 per ton if the traffic is handled that route, and that is true whether it is a single line haul over the A. B. & C. direct to Atlanta from Junction City for 104 miles, or whether it is a joint line haul in connection with the Southern via Woodbury into Atlanta. Referring to my exhibit 163-B regarding the Junction City rate to Atlanta via the Southern, it would give the Junction City shipper the benefit of the Southern Railway's facilities in Atlanta, but not necessarily the facilities of all other lines; it is within the distances prescribed by the Georgia Commission in its Freight Rule 23 (Rec., 2128). In that same exhibit the grouping of the Georgia scale provides for a rate of $1.00 *for* ton for distances over 90 to and including 110 miles.

Q. Did you have in mind any particular competitive situation when that grouping was made?

[fol. 678] Mr. Burchmore: I object to that question on the ground that it calls for an answer of this witness as to the judgment of the Georgia Commission as expressed in the order in which that scale was established. The order must speak for itself (Rec., 2129).

The Witness: I would like to explain my position in reference to the question.

Exam. Waters: Yes, explain it.

The Witness: I am under oath. I try to tell the truth whether I am under oath or not. It would be impossible for me to say what any member of our Commission had in mind at the time he cast his vote on any order issued by the Georgia Public Service Commission, and I cannot testify in regard to an order issued by the Georgia Public Service Commission beyond what is stated in the order, and the opinion that goes with it (Rec., 2130).

The grouping under the Georgia scale places shippers at Junction City on the A. B. & C. on the same rate basis as Rollo and Gaillard to Atlanta. I will have to refer to my exhibit, 178-B, which covers that situation. If Junction City and Rollo both come within the bounds of that distance of 90 to 110 miles, the rate from both points to Atlanta would be $1.00 (Rec., 2131).

I don't recall any scale prescribed by the I. C. C. on roadbuilding materials such as sand, gravel, crushed stone [fol. 679] and slag that don't provide for joint line differentials for joint line hauls. In the other scales I have referred to, the character of the other commodities is of a higher grade than sand and gravel, and generally speaking reflect a higher level of rates (Rec., 2133).

Referring to my Exhibit 175-B, showing a comparison of the Rollo single line rates fo stations on the Southern with joint line rates from Junction City to the same stations, my statement that the 17517 scale would produce rates discriminatory against Junction City shippers is based on the fact that whether it be a joint or a single line it creates a higher rate for an equal distance (Rec., 2134).

I see no material difference in the conditions surrounding the handling of traffic from Junction City over two railroads to reach Southern Railway and that on sand reaching these stations from Rollo, Ga. Rollo, Ga., as I stated in my direct testimony, is just south of Atlanta here, near Fort Valley. These stations here are north of Atlanta, between Atlanta and the South Carolina state line. The traffic brought in from Rollo by the Southern Railway destined to Tugalo, Ga., the last point on this exhibit, would move through the Southern Railway yard, where it would be broken up and switched in to trains, on the same principle that if this traffic was delivered to the Southern Railway by the Atlanta, Birmingham & Coast and switched into trains, if that is what you have reference to (Rec., 2135).

I am speaking of the entire movement, because you have got to take into consideration, and I presume that is what you have got to take into consideration, and I presume [fol. 680] that is what you have reference to, the actual physical handling of the traffic, and both movements would be through the Atlanta terminals. Traffic reaching At-

lanta destined to Southern Railway stations via the A. B. & C., would go into the A. B. & C. yards and from there to the interchange track with the Southern. It will pass through three yards on the Southern, through the South yard, through the North Avenue yard, and then over to the Inman yard. Under the normal operating movement for traffic to be interchanged in joint line hauls, it first goes to the break-up yard (Rec., 2136). I am talking now about the conditions that existed years ago when I was in the railroad service, and so far as I know there has been no change in the general handling of traffic. These trains are brought in to the train yard, where they are broken up and classified into the cuts going to connecting lines or the cuts going out over another division, or to the cut for distribution for local delivery. The physical handling is practically the same as far as I can see. After that is done, it is delivered on the interchange track of the connecting line, the same as it would be delivered at a public team track or a private assigned siding, or if it were destined to a connecting line for delivery on the connecting line's track. Then the connecting line goes to this interchange track and picks this cut of cars up and takes it to its yard, and there it is made up into trains and taken out over the connecting line (Rec., 2137), the same as if it came in over their own line from the south. [fol. 681] If you have in mind a station 10 miles south of Atlanta as compared with business moving from Rollo to that station, or business from Junction City to that station, there would naturally be a greater distance (Rec., 2140); and if it fell within that grouping of 90 to 110 miles, it would be the same.

My understanding of the 17517 scale is that the rate from Rollo would be higher than that from Junction City because of the application of the joint line differential. Yes, I could have shown instances where Rollo could have been discriminated against because of the application of the 17517 scale, just as I did show Junction City to be discriminated against. The exhibits I put in merely illustrate the condition and do not purport to show all of the conditions throughout the state (Rec., 2141.)

By Mr. Watkins:

There is sand produced at Lumber City, Ga., and my recollection is that it is 182 miles from Atlanta, and I think

Lowry, Ga., is another point. Yes, there are in Georgia plants that would benefit by the 5¢ progression for 25 miles and plants that would pay 10¢ for the 25 mile progression (Rec., 2142).

I don't think the mileage blocks should be always constant. If I understand what you mean by being constant, say you start out with a 20 mile mileage block on a 500-mile scale, and you make your breaks at 20 miles for the entire distance. I do not think that should be done on this commodity. I think the mileage block should be increased at given distances uniformly and that the rate of progression as to that rate should then be uniform with those mileage blocks so as to produce a decrease in the rate of progression as the distances increase, and thereby [fol. 682] bring about uniformity (Rec., 2143), and I regard that as largely a question of judgment of the rate prescribing agency.

By Mr. Webster:

Q. If in making a scale, and the distance is figured 230 and over 200 miles, which is a 30 mile progression, if the rate of progression should be five cents, how would you then justify the next 30 mile scale on basis of 10 cents progression?

A. Mr. Webster, I consider that is an inconsistent rate of progression.

(Witness excused.)

[fol. 683] Willis Callaway was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Webster:

I appear for and am the general sales manager for the Georgia Lime Rock Company, located at Perry, Ga., and have direct supervision over all sales and shipments moving from Perry. I am not a rate expert. I know very little about the construction and application of rates from a rate expert's point of view.

My testimony in this case will be that of a business man endeavoring to show, from a business point of view, the possibilities that we will have to face in the event a revision or readjustment is made in the transportation charges, or the basis for construction of transportation charges to be collected in the furture in Georgia.

Mr. Cotterill: If your Honor please, I object to the testimony under the witness' statement of what it purports to be. It is wholly immaterial what a business man's point of view may be as to the results which might result from the application of the interstate commerce act. The thing we are here inquiring into is whether or not the Act is being violated (Rec., 2145).

A. The plant at Perry commenced shipping January 12, 1928. I have had our shipments tabulated for the period January 12, to August 14, 1928, which is approximately seven months.

I submit herewith, as my exhibit No. 181-B, statement showing tonnage that has moved from Perry to both single line destinations and joint line destinations. We have made no shipments to interstate joints. During this period the plant shipped 199,744 tons, of which 98.1 per cent of [fol. 684] the total movement was transported to a destination on a line other than Central of Georgia Railway, and 1.9 per cent of the total tonnage moved to the single line destinations.

This statement very clearly shows the extent to which the Georgia Lime-Rock Company shipping from Perry, Ga. will be handicapped by the ability of its competitors located at Chattanooga, Birmingham and Montgomery (Rec., 2148) to move competitive traffic from interstate points, in the event the proposed joint line arbitrary is added to the joint line movement.

When it is taken into consideration that more than 98 per cent of our total tonnage will move on the joint line arbitrary, it is very easy to see how distinct a disadvantage and prejudice will accrue against the Perry shipper as contrasted against the interstate shipper moving his traffic on the single line rate.

I want to repeat that the statement submitted herewith correctly reflects every ton of freight that has moved from Perry during the period indicated, and while it is true that

our destination points will change, as our contracts will vary, yet I believe that the seven months period shown reflects a relative situation that we may expect to have in future.

To show the effect in principle of the single line and joint line scale contrasted with the one mileage scale for both joint and single line application, there is submitted herewith page 2 of the exhibit showing the railroad mileage in Georgia embrased within the class A or standard railroad grouping. Within Georgia there are 5,359 miles of standard railroad classification.

The point represented by me is Perry, Ga. From this point at the present time there is shipped limerock (Rec., 2149).

[fol. 685] This commodity is competitive with practically all other commodities in the so-called sand and gravel Interstate Commerce Commission grouping, when used in connection with highway construction. The interstate points from which we receive our greatest competition are Montgomery, Ala., Birmingham, Ala., and Chattanooga, Tenn. The plants located at these points have a geographic and transportation location that permit such plants to ship upon a single line scale to a much greater territory than the plant located at Perry, Ga.

Pages 3, 4, and 5 show the extent of such territorial advantage whenever shipments are made from the interstate points mentioned to Georgia destinations.

Perry, Ga. can ship in Georgia to only 1329 miles of territory on a single line rate adjustment. This is equivalent to 24 per cent of the Georgia mileage; whereas Montgomery can reach 3097 miles of territory, equivalent to 57 per cent of the total Georgia mileage. Chattanooga can reach 3760 miles of territory, or 70 per cent of the total Georgia mileage. Birmingham can reach 4049 miles of territory, or 74 per cent of the total Georgia territory.

Representing the manufacturers and miners in Georgia at the point named, I am authorized to state that it is the belief of said shippers that a more equitable adjustment (Rec., 2150) all around would be a consolidation of the single and joint line scale with the single line scale, to be made applicable to both interstate and intrastate shipments. It is our belief that commodities of such low value as the commodities embraced in this case should be given

the greatest possible latitude in the distribution thereof [fol. 686] and no hard or fixed transportation company division should be used in prescribing the rates for general distribution.

Any general schedule of rates, intrastate and interstate, that produces the effect above shown, say at Perry, works to the great disadvantage and prejudice of the Georgia shipper in attempting to meet the competition of the interstate shipper; in that, the Georgia shipper can not reach more than one third to one half of the territory that the interstate shipper can reach by using the single line scale from interstate points, and joint line scale from Georgia points to the territories affected by this case.

My testimony relates strictly to Perry, Ga. (Rec., 2151).

Cross-examination.

By Mr. Cotterill:

On the first page of my exhibit, take Baxley, for instance, on the Southern; that would be a single line from Chattanooga on the Southern, and from Montgomery it would be a joint line. It seems to be true that we started out at Baxley in selling this material with an advantage over Montgomery because while both of us had a joint line mileage to Baxley the interstate shipper had to pay from Montgomery a higher charge than we did (Rec., 2153).

[fol. 687] By the heading of my exhibit "can be reached", I meant shipments moving from Montgomery can reach 1329 miles of Central of Georgia destinations on a single line movement. I don't think business could move single line out of Montgomery to L. & N. destinations in Georgia. The L. & N. used to have a route up through Cartersville with a connection. It may still be in existence (Rec., 2154).

In my exhibit I have assumed the practical possibility of a single line haul from Montgomery to L. & N. destinations in Georgia though I don't know what working arrangement the L. & N. may have with some of its connections. In the case of the Louisville & Nashville R. R. there you may have isolated an instance that would not be particularly applied to the point you are making, but if you will take any of the rest of the railroads, the Central of Georgia, the Atlantic Coast Line, the Atlanta & West Point or the Seaboard Air Line, you will find that they all moved

from Montgomery right into Georgia, and that is what I am trying to bring out of all these railroads (Rec., 2155).

They do move from Montgomery into Georgia over those railroads and to all stations on those railways in Georgia, and move over single line routes and single line rates. With reference to a movement from Montgomery to a destination northwest of Atlanta on the Seaboard Air Line, it might be taken to Savannah and brought up that way. I don't know their traffic arrangement (Rec., 2156).

[fol. 688] I have assumed as a practical matter that the Montgomery interests would get the single line rate, although the only single line route the Seaboard would have would be from Montgomery to Savannah, and then northwesterly 300 miles through Atlanta to destination. I do not know whether they would move it that way and I don't pose as a rate expert. Yes, it is my understanding and I have assumed that wherever there is a destination in Georgia on a railroad also serving Montgomery that the haul may be over that railroad as a single line from Montgomery and also that it would be the single line interstate scale that would be charged, and accordingly that we would be numerically at a disadvantage (Rec., 2157). My testimony is based on that understanding of the discrimination.

By Mr. Gwathmey:

Yes, my exhibit shows the fact to be that from January 12 to August 14, 1928, the entire tonnage from Perry moved exclusively to points in Georgia. We were not operating prior to January 12, 1928 (Rec., 2158).

By Exam. Waters:

I haven't figured it out but our average haul is something over 100 miles. We have not been paying a joint line scale since the Georgia Commission's order became effective (Rec., 2159).

By Mr. Caskie:

I know that Macon is on a single line, and I think Atlanta and the other points would be joint line, and if that is true, it is my understanding then that Montgomery would pay the

joint line rates to all points, other than to Atlanta and Macon, shown on my exhibit (Rec., 2160).

[fol. 688a] Q. Now if the joint line scale applied from Perry to these points in Georgia, would not you be on an exact equality so far as Montgomery is concerned, both paying joint line differentials to reach these points?

A. I will answer that in this way: We are not worrying so much about the business that has moved as the business that is going to move.

Q. But you put this in evidence.

A. In that particular case I would say "Yes."

Q. Now go one step further. You don't pay a joint line arbitrary to reach these points?

A. We did on some of the earlier shipments.

Q. That was prior to May? May 1st?

A. Yes, sir.

Q. Since May 1st you have not paid a joint line differential to reach these points?

A. That is right (Rec., 2160).

Witness excused.

[fol. 689] L. E. THORPE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Webster:

I am traffic manager of the William P. McDonald Construction Company and associated companies engaged in the manufacture and shipment of materials for highway construction throughout the southeastern territory, with headquarters at Lakeland, Fla. (Rec., 2161).

The particular company for which I appear at this hearing is Consolidated Quarries, Inc., located at Lithonia, Ga., on the Georgia R. R. This company, when its plant is completed, will ship crushed rock and other roadway materials for the use of highway construction in Georgia.

I will file at this point Exhibit 182-B, consisting of 11 pages.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 182-B, Witness Thorp.")

Page 1 is a statement of class A or standard railroads with mileages operated in Georgia.

In this statement it is shown that there is 5,359 miles of standard railroads in Georgia. This exhibit shows the railroads upon which the single line scale will apply in Georgia, regardless of whether there is a one line or two line haul.

Page 2 shows the discriminatory results and territories affected by applying the single line rate from Lithonia as contrasted with the single line interstate scale from interstate points. If a joint line schedule should be established [fol. 690] on Georgia intrastate traffic it would mean that Birmingham could reach on the single line scale 74% of Georgia territory on standard railroad lines, whereas Lithonia could only reach 6% (Rec., 2162).

Expressed in mileage, Lithonia would be able to reach only 328 miles of territory, whereas Birmingham would be able to reach 4049 miles of territory. It will thus be seen that if a joint line arbitrary is applied on Georgia intrastate traffic, our shipments from Lithonia will be very heavily penalized because of the fact that we are located on the Georgia R. R., and this railroad only operates 328 miles of railroad in the state of Georgia.

Page 3 shows a similar result that would obtain from Chattanooga, Tenn., contrasted with Lithonia, in the event a joint line schedule should be made operative between Georgia points.

This statement shows that under the joint line rate structure such as now applies interstate, the Lithonia man would only be able to reach 6% of the total Georgia territory as against 70% that could be reached from Chattanooga on the single line rate.

Page 4 shows the same relation that would obtain from Montgomery versus Lithonia from this point. The interstate shippers would be able to reach 57% of Georgia territory on the single line scale, whereas the plant located at Lithonia could only reach 6% on the single line scale (Rec., 2163).

Pages 5, 6, 7, and 8 are intended to show some stations, with actual rate adjustment that would obtain to said sta-

tions, as contrasted with Chattanooga, Montgomery and Stockbridge, Ga.

Our objection to the joint line scale in Georgia goes to the fundamental basis of rate structure rather than to par-
[fol. 691] ticular points. These particular points are only put in for the purpose of showing the actual rates that would obtain to certain specific destinations.

Pages 9, 10 and 11 are merely graphs drawn to scale, showing the territory that would be available from Birmingham, Chattanooga and Montgomery to Georgia destinations on the single line rate schedule, as contrasted with the territory that would be available to Lithonia, Ga., on basis of the single line and joint line rate schedule.

These exhibits are merely reproductions of the figures shown in previous exhibits and tend to more clearly bring out the result from our point of view, showing that under the single line, joint line rate schedule, Lithonia, because of local conditions obtaining in Georgia, would be very severely handicapped in comparison with the interstate shippers.

As I have previously stated, it is our belief as miners, shippers, and roadway builders that commodities of such low value as commodities embraced in this case should be given the greatest possible latitude in the distribution thereof, and no hard or fixed railroad company divisions used in prescribing rates for general distribution (Rec., 2164).

The federal, state, county and municipal authorities should have the greatest latitude possible in the selection of the type of these commodities that are to go into a particular piece of roadway, and, in my opinion, such a situation can only be successfully met by putting all rates on the single line schedule, the same as this honorable Commission has done for numerous commodities that have much greater values than commodities here under discussion.

[fol. 692] Cross-examination.

By Mr. Cotterill:

I think our limited field of consumption is a justifiable difference for charging a joint line differential on a joint line movement from Montgomery to a point in Georgia and

not charging a joint line movement from our plant to the same destinations in Georgia (Rec., 2165).

The interstate shipper can reach far more territory on the single line haul than we can. Of course, if you assume that each and all of the movements is joint line, I see no reason why one should pay a joint line differential and the other should not. Our geographical position is such that a large proportion of our hauls would be joint line. We are against joint line differentials as such and I am not seeking to justify a different rule between interstate and intrastate joint line hauls (Rec., 2166).

By Mr. Caskie:

I didn't show Southern Railway stations in Georgia on Sheet 4 of my exhibit because the Southern does not go to Montgomery. It would be a joint haul. It would be joint hauls from Lithonia to all points in Georgia on the Southern. I don't know what the relationship would be between the carrier originating at Montgomery with the Southern R. R. If they have no relation, it would be a joint line from Montgomery to all Southern Railway stations in Georgia.

By Mr. Cotterill:

Our interests acquired this Lithonia plant sometime in June of this year (Rec., 2167).

[fol. 693] By Mr. Burchmore:

I don't understand that if instead of operating a stone plant we manufactured and shipped bricks from Lithonia and our Alabama competitors shipped bricks, we would both take the single line scale to joint line deliveries.

(Witness excused.)

A. P. Burke was thereupon called as a witness and, *first* first duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am President of the Atlanta Sand & Supply Company, producing sand only, at our plant at Rollo (Rec., 2168).

We formerly operated a plant at Gaillard and at Rollo. The billing point for this sand is Gaillard, and another plant in the same general territory is the Allon Sand Company, at Allon, Ga., and Gaillard is the billing point for Allon. We are located one mile south of Gaillard at Rollo, and the Allon Company's plant is one mile south of our plant. I have been authorized and directed to represent the Allon Sand Company because they operate on the same railroad and their interests in rate matters are identical with ours and I am familiar with their market situation (Rec., 2169).

Our present plant capacity is about 20 cars a day and our total average shipments is 10 to 12 cars per day. I think the Allon's capacity is 10 cars a day, and for the past 8 months their average shipments have been around 3 or 4 cars per day. In 1927 our average shipments to Atlanta were 20 cars per day and the Allon Company's averaged 6 or 7 cars per day. At the present time the average ship-
[fol. 694] ment is about 15 cars per day for both companies. (Rec., 2170).

In the past two or three years there were two, as many as three and sometimes five other shippers. Our selling price up and into 1927 was from 50¢ to 60¢ per ton. The 50¢ price was made to dealers for re-sale. To meet competition from the Junction City district our price has been forced down to a minimum of 40¢ to the dealer for re-sale, which is $1.40 Atlanta. That price is compared with the basis of 35¢ given by Mr. Brown and 30¢ given by Mr. Moore (Rec., 2171).

My information is these companies sell through dealers. Our investment in operations at Gaillard is around $200,000.00. I have been talking about washed sand. We have not shipped any dry sand for a number of years, although recently we got started, shipped a few cars, perhaps 25. Our price on dry sand is 25¢ and 30¢ per ton f. o. b. plant (Rec., 2172).

A shipment from our plant would move on the Georgia scale uniformly from origin to destination, and we are, therefore, restricted in Atlanta and Atlanta group points by Southern deliveries other than industries on the usual trackage arrangement. We can't make team track delivery on other lines. We are advocating a permanent uniform adjustment of state and interstate rates on sand and other

materials that will reflect the proper relative basis, based on distance, and permit of no departures.

Cross-examination.

By Mr. Cotterill:

What I have said applies equally to the rigorous maintenance of a uniform rate structure on this class of state and interstate traffic. As one of the largest shippers in the state, I think there is something wrong with the rate situation that needs correction (Rec., 2173).

(Witness excused.)

[fol. 695] Edwin Brooker was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I have three exhibits that I wish to present, to illustrate the situation as explained, relative to the Junction City-Rollo-Gaillard adjustment.

The first is a map which I will offer as exhibit No. 183-B.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 183-B, Witness Brooker.")

My next exhibit is a comparison of the mileages and routes applicable from competitive points to Atlanta and Atlanta group points. As a matter of comparison I have shown the mileages from Birmingham and Montgomery to the same destinations. I wish to offer this as exhibit 184-B (Rec. 2174).

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 184-B, Witness Brooker.")

My next exhibit shows a comparison of the mileages and rates on sand from the same competitive points. I wish to offer that as exhibit 185-B.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 185-B, Witness Brooker.")

These exhibits are self-explanatory (Rec., 2175).

(Witness excused.)

[fol. 696] HARRY T. MOORE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I appear on behalf of the City of Atlanta, the Fulton County State Highway Board of Georgia, DeKalb County, Davidson Granite Co., Pine Mountain Granite Co. (Rec., 2175), Arabia Granite Co., Chupp Granite Co., Lithonia Granite Co., Brown Brothers, Howard, Ga., Moorac Sand Company, Junction City, Pa., and the following wholesale dealers in sand located in Atlanta: Campbell Coal Company; Cromer & Thornton, Inc., V. H. Kreigshaber & Son, and Nichols Contracting Co.

My exhibit 186-B is a statement of the total miles of standard gauge railroad operated within the state of Georgia, totaling 5,278.04 miles.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 186-B, Witness Moore.")

Exhibit 187-B is a statement comparing the single line haul available within the State of Georgia from interstate producing points with producing points located within Georgia.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 187-B, Witness Moore.")

This statement shows that shippers located in Montgomery, Ala., have 2,740 miles of single line hauls into Georgia while Perry and Howard, Ga., have only 1,372 miles (Rec. 2176).

Birmingham shippers of slag have 3,241 miles of single line hauls into Georgia, while Norris, Lithonia and Stone Mountain, Ga., shippers of gravel and granite competing with Alabama slag have only 328 miles of single hauls within Georgia.

[fol. 697] Oglesby, Ga., quarries have available only 313 miles of single line hauls within Georgia.

Junction City, Ga., shippers of sand have only 483 miles of single line hauls in Georgia.

Rollo and Gaillard, Ga., shippers of sand have 1,073 miles of single line hauls in Georgia against Montgomery

shippers of sand, having 2,740 miles of single line hauls into Georgia.

Stockbridge, Ga., stone quarries have 1,073 miles of single line hauls against Montgomery gravel shippers, of 2,740 miles of single line hauls (Rec., 2177).

Birmingham slag shippers have 3,267 miles of single line hauls, and Chattanooga shippers of gravel and sand have 2,858 miles of single line hauls into Georgia against Oglesby quarries, of only 313 miles of single line hauls within Georgia.

Exhibit 188-B is a statement showing the present rates on crushed stone, carload, from Graysville, Ga., as compared with the present rates applicable on slag, carload, from Alabama City, Ala., to stations located on the Southern Railway, between Atlanta and Brunswick, Ga., and the application of the so-called 17517 mileage scale from Graysville, Ga., the haul from the Georgia shipping point being joint line and from the interstate shiping point single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 188-B, Witness Moore.")

[fol. 698] This exhibit shows 77 points of destination located on the Southern Railway between Atlanta and Brunswick, Ga., originating on shipments of slag from Alabama City, showing the distances and the 17517 scale on slag, and to right of this column is shown the Georgia scale (Rec., 2178).

If there were producing points within Georgia for which the single line distance was the same as from Alabama City, the result would be as follows:

To 19 points of destination the 17517 scale and the Georgia scale are the same.

To seven points of destination the Georgia scale would be lower than the 17517 scale.

If the 17517 joint scale was applied from Graysville, Ga., distance for distance, the 77 points of destination from Graysville would be higher by amounts ranging from five to 15 cents per ton than from Alabama City.

By applying the 17517 joint scale from Graysville to the 77 points of destination shown on exhibit 3, the result would be that eight points of destination would be the same as Alabama City;

Five less than from Alabama City;

While 64 points from Graysville would be higher than from Alabama City for 13 miles shorter haul from Graysville.

Exhibit 189-B is a statement showing the present rates on crushed stone, carload, from Perry, Ga., as compared with the present rates applicable on slag, carloads, from Alabama City, Ala., to stations on the Southern Railway (Rec., 2179) between Atlanta, Ga., and the South Carolina state line, and the application of the so-called 17517 mileage [fol. 699] scale from Perry, Ga.; the haul from the Georgia shipping point being joint line and from the interstate shipping point being single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 189-B, Witness Moore.")

This exhibit shows 28 points of destination located on the Southern Railway between Armour and Tugalo, Ga., on shipments of slag originating at Alabama City, Ala., showing the distances and the 17517 scale on slag, and to the right of this column is shown the Georgia scale.

If there were producing points within Georgia for which the single line distance was the same as from Alabama City, Ala., the result would be as follows:

To five points of destination the Georgia scale would be lower than the 17517 scale;

To five points of destination the 17517 scale would be less than the Georgia scale; and

To 18 points of destination the Georgia scale and the 17517 scale would be the same (Rec., 2180).

In the event the 17517 joint scale was applied from Perry, Ga., all points shown on exhibit would be higher than from Alabama City, a shorter haul being from Perry, Ga.

Exhibit No. 190-B, consisting of two pages, is a statement showing the present rates on crushed stone, carload, from Stone Mountain, Ga., as compared with the present

rates applicable on gravel, carload, from Montgomery, Ala., to stations located on the Seaboard Air Line Railway [fol. 700] between Cordele and Savannah, Ga., and the application of the so-called 17517 mileage scale from Stone Mountain, Ga.; the haul from the Georgia shipping point being joint line and from the interstate shipping point single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 190-B, Witness Moore.")

This exhibit shows 56 points of destination located on the Seaboard Air Line between Cordele, Ga. and Savannah, Ga., inclusive, covering shipments of gravel from Montgomery, Ala., showing the distances and the 17517 scale on gravel, and to the right of this column is shown the Georgia scale (Rec., 2181).

If there were producing points within Georgia for which the single line distance was the same as from Montgomery, Ala., the result would be as follows:

To 19 points of destination the Georgia scale and 17517 scale are the same.

To six points of destination the Georgia scale is lower than the 17517 scale, and to 31 points of destination the Georgia scale is higher than the 17517 scale.

In the event the 17517 joint scale was applied from Stone Mountain, Ga., to the same points of destination the rates to substantially all of the 56 points would be higher than from Montgomery, and in many cases higher from Stone Mountain for a 44 mile shorter haul than from Montgomery, Ala.

My exhibit 191-B is a statement showing the present rates on gravel, carload, from Norris, Ga. as compared with the present rates applicable on slag, carload, from [fol. 701] Alabama City, Ala. to stations located on the Southern Railway between Atlanta and Lula, Ga., and the application of the so-called 17517 mileage scale from Norris, Ga.; the haul from the Georgia shipping points being joint line and from the interstate shipping point single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale (Rec., 2182).

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 191-B, Witness Moore.")

This exhibit shows 15 points of destination located on the Southern Railway between Armour and Lula, Ga., covering shipments of slag originating at Alabama City, Ala., showing the distances and the 17517 scale on slag, and to the right of this column is shown the Georgia scale.

If there were producing points within Georgia for which the single line distance was the same as from Alabama City the result would be as follows:

To nine points of destination the 17517 scale and the Georgia scale are the same.

To five points of destination the Georgia scale is lower; and

To one point of destination the Georgia scale is higher.

If the 17517 joint scale was applied from Norris, Ga. to practically all points shown on exhibit, would be higher than from Alabama City, Ala., the shorther haul being from Norris, Ga.

My exhibit 192-B is a statement of the present rate on slag, carload, from two interstate shipping points such as Anniston, Ala. and Copper Hill, Tenn., to destinations within the state of Georgia; the haul from one point being single and the other joint, indicating the disadvantage of the shipping point having joint haul as a result of joint line differentials (Rec., 2183).

[fol. 702] Mr. Gwathmey: We object to this exhibit. I don't suppose it is necessary to state the ground.

Exam. Waters: I think we all understand the ground. It is admitted subject to your objection.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 192-B, Witness Moore.")

This exhibit shows two interstate points of origin to stations on the Southern Railway from Constitution to Brunswick, Ga., inclusive, Anniston, Ala. being a single line haul, while from Copperhill, Tenn. joint hauls in all instances.

My exhibit No. 193-B is a statement of the present rates applicable on sand, carloads, from Columbus, Ga. and Junction City, Ga., Atlanta, Birmingham & Coast Railroad, road) to Central of Georgia Railway stations between Newnan, Ga. and Chattanooga, Tenn., compared with the

present rates from Chattanooga, Tenn. to the same destinations; also the rates that would result by applying the 17517 scale from the two Georgia shipping points, indicating the disadvantage of the Georgia shipper located at Junction City, Ga., Atlanta, Birmingham & Coast Railroad, under joint line differentials (Rec., 2184).

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 193-B, Witness Moore.")

This exhibit shows the result of applying the joint 17517 scale from one Georgia producing point and the application of the single line scale from the other Georgia point, the haul from Junction City being joint, and from Columbus being the single line; the distance to the points of destination shown being approximately the same.

[fol. 703] The single line rates are also shown from Chattanooga, Tenn., an interstate point, to these same destinations.

This exhibit also shows the two extremes, Junction City, Ga., versus Chattanooga, Tenn., at Dep. Ga., the present rate from Junction City is $1.30; from Chattanooga 90 cents; the distance from Junction City being 163 miles, and from Chattanooga 77 miles; the difference in rate in favor of Chattanooga being 40 cents.

Under the 17517 joint scale it would be increased to 50 cents.

At Newnan, Ga., where the distance is reversed, from Chattanooga 163 miles and from Junction City 77 miles, the Junction City rate is 90 cents and the Chattanooga rate $1.30; the same as reverse of the situation in effect today (Rec., 2185).

Under the 17517 joint scale at this point the Junction City rate would become $1.05, reducing the present spread of 40 cents Junction City under Chattanooga to 25 cents; whereas under the Chattanooga end of the adjustment the difference would be 50 cents in favor of Chattanooga.

Exhibit No. 194-B is a statement showing the present rates on crushed stone, carload, from Georgia producing points as compared with a competing interstate producing point such as Montgomery, Ala., to destinations on the Georgia Railroad within the industrial switching limits of Atlanta and adjacent thereto, compared with the rates that would result by applying the 17517 joint line mileage scale,

indicating the disadvantage of the Georgia shipper of crushed stone with the interstate shipper of gravel, based on car of 90,000 pounds or 45 net tons.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 194-B, Witness Moore.")

This exhibit indicates the result of applying the 17517 [fol. 704] joint line scale from Portland, Ga. to Avondale, Ga. and Decatur, Ga., the distance being the same to both points of destination. The present rate from Portland to both points of destination is 80 cents.

The application of 17517 joint scale, the rate to Avondale, Ga. would be 95 cents; to Decatur, Ga., 85 cents (Rec., 2186) when the private or assigned siding, a difference of ten cents per ton for only one mile difference in distance, and both points fall within the same block.

From Graysville, Ga. to Avondale, Ga. and Decatur, Ga. the present rate is $1.10 to both points. In the event of the 17517 joint scale being applied Graysville and Avondale rate would become $1.35; to Decatur, Ga., $1.15, when for private or assigned siding, a difference of 20 cents in favor of Decatur for only one mile difference in distance, and both points fall within the same block (Rec., 2187).

One of the largest developments around Atlanta is at Avondale.

From Montgomery, Ala. to Avondale, Ga. the present rate is $1.45 for a joint line haul of 183 miles; while from Montgomery to Decatur, Ga. the present rate is $1.30 for 182 miles; or 15 cents less than the 17517 joint scale; giving Decatur an advantage of 15 cents under Avondale for a difference in distance of only one mile.

Exhibit No. 195-B is a statement showing the present rates on crushed stone, carload, from a Georgia producing point as compared with a competing interstate producing point of gravel, such as Montgomery, Ala., to destinations [fol. 705] on the Seaboard Air Line Railway within the industrial switching limits of Atlanta, compared with the rates that (Rec., 2187) would result by applying the 17517 joint line mileage scale, indicating the disadvantage of the Georgia shipper of crushed stone with the interstate shipper of gravel, based on car of 90,000 pounds or 45 net tons.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 195-B, Witness Moore.")

From Lithonia, Ga. to Deerland, Ga., a distance of 29 miles, located on Seaboard Air Line, the present rate is 60 cents, which is on the Georgia scale.

In the event the 17517 scale was applied the rate would become 75 cents.

From Montgomery, Ala. to Deerland, Ga. the present rate is $1.30; or 15 cents under the joint line scale. The present spread being 70 cents with no change proposed in the Montgomery and Deerland rate, the spread would be only 70 cents.

A similar situation would exist between Lithonia and Montgomery destined to Emory, Ga., a point located on the Seaboard Air Line, except the Lithonia to Emory rate under 17517 scale would become 85 cents; 10 cents higher than from Lithonia to Deerland for exactly the same haul.

The present rate from Montgomery to Emory is $1.30; 15 cents under the 17517 joint scale. The present spread Lithonia to Emory under Montgomery is 60 cents; under the 17517 scale it would be only 45 cents (Rec., 2188).

My exhibit No. 196-B is a statement showing the rates on sand, gravel and slag, carloads, from producing points as shown to Atlanta, Ga., for delivery on private or as-[fol. 706] signed sidings of the Southern Railway I. C. C. A-10150, under the present Georgia scale and the 17517 scale, based on car of 45 net tons or 90,000 pounds.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 196-B, Witness Moore.")

This exhibit indicates the change in relationship as between state and interstate producing points on traffic consigned to Atlanta, and when for delivery on the Southern Railway which would be brought about in the event the 17517 joint scale was applied from all of the Georgia producing points shown on the exhibit.

This exhibit shows that from Junction City sand originating at that point can be delivered on the Southern Railway for $1.00, this being the single and joint line scale of the Georgia Public Service Commission.

Under the 17517 scale the rate would be $1.25 for Zone B delivery, or five cents higher than from Chehaw, Ala.,

to Zone B delivery, to which zone the bulk of the traffic is handled, and only five cents less than from Montgomery (Rec., 2189), due to the absorption by the Atlanta & West Point; while the 17517 scale would produce $1.35 to these deliveries from Montgomery; the present rate is $1.30 per ton.

From Norris, Ga., a point located on the Georgia Railroad, controlled by the same interest as lines operating from Montgomery and Chehaw, the rate to both Zones A and B deliveries of the Southern Railway would be five cents in excess of the Chehaw rate, and only five cents less than present rate from Montgomery.

On the Norris, Ga. shipments for Southern Railway de- [fol. 707] livery to both Zones A and B, the Georgia Railroad receives $1.20 net, which is on the Georgia scale, and same as the 17517 single line scale; while from Chehaw, Ala., the Western Railway of Alabama and Atlanta & West Point under the same traffic management will absorb 30 cents terminal of the Southern Railway, leaving only a net of 90 cents per ton on Chehaw, Ala. and Atlanta shipments, or 30 cents less than on the intrastate shipment from Norris, Ga., for the same distance.

The foregoing illustrations are fairly typical of hundreds of other comparisons that can be made by using the single line scales from interstate producing points into Georgia versus the application of the 17517 scale from producing points for joint hauls on intrastate traffic (Rec., 2190).

Q. And it also illustrates, does it not, Mr. Moore, that in numerous instances the carriers are not now collecting the full 17517 scale?

A. That is true.

Mr. Cotterill: Wait a minute, we object to that and move that it be stricken. It has to be proven by facts and not a general statement of that kind (Rec., 2191).

In conclusion, I would like to make this statement, that in our opinion the only purpose a differential can possibly serve is to create an artificial rate situation calculated to give some community an advantage to which its geographical location does not entitle it. This conclusion is in record with views expressed by the Interstate Commerce Commission in 101 I. C. C. 603 (Rec., 2191).

I want to make a correction on the Exhibit 187-B where the mileage from Junction City is given as 483 miles. The mileage of the Central should be added to that because [fol. 708] though not at Junction City it pays the Junction City rate.

Cross-examination.

By Mr. Cotterill:

Referring to Exhibit 188-B, all hauls from Montgomery Ala., to all of those destinations would be joint (Rec., 2192).

I don't advocate a joint line differential on interstate traffic and not on intrastate traffic, but it would depend on conditions for me to say I advocate a different single line scale on these commodities as between inter- and intrastate traffic. If all the circumstances surrounding the application of a single line scale are the same, state and interstate, I would say there should be no difference (Rec., 2193). Certainly there are dissimilarities of circumstances. I should want to know how the scales were constructed. I would have to know the construction because the conditions may not be the same. The same single line scale used interstate applied within Georgia might be discriminatory against intrastate traffic between points in Georgia.

Q. I mean what would cause the same scale on state and interstate traffic to cause a discrimination against Georgia?

A. I would not answer that unless you can give me two points that you have in mind, and if the conditions and circumstances were identical I can give you an answer (Rec., 2194).

By Mr. Gwathmey:

The reason we selected in my exhibit 188-B the four points, Graysville, Perry, Stone Mountain and Norris, was that those points came nearer matching the distance, mile for mile, than anything we could find. No, there are no other [fol. 709] shipping points in Georgia we might have selected that would have shown a different result where the joint haul was in Georgia.

Q. If you had selected Montgomery instead of Alabama City on this exhibit 188-B, you would have gotten a very different result, wouldn't you?

A. I think we should be permitted to make up our own exhibits in our own way. I told you the reason that I selected those points shown in that exhibit, because the distance was substantially the same. Now, to be fair about it, I show what the Georgia scale would be if applied from Alabama City, if there were producing points within Georgia of the same distance.

By Mr. Burchmore:

It makes no difference to my companies whether the competitor in another state has a higher or lower scale if his actual freight rate is lower than mine (Rec., 2195).

The rates from Montgomery to Atlanta are lower than from Alabama City. From Montgomery to the stations named on my exhibit 188-B, the rates in cents per net ton are higher than the rates from Alabama City to those destinations and a comparison of the distances shows, to points south of Atlanta on the Brunswick & Atlanta Division the distance from Montgomery to Atlanta is 176 miles and the distance from Graysville is 126 miles, a difference of 50 miles shorter haul from Graysville, and the haul from Alabama City would be 39 miles less than Montgomery (Rec., 2196).

(Witness excused.)

[fol. 710] Exam. Waters: Any more witnesses on direct on either side?

(No response.)

Exam. Waters: If not, we will have the rebuttal.

L. V. Crane was thereupon recalled as a witness and being previously sworn, further testified as follows:

Direct examination.

By Mr. Walker:

As I understand Mr. Price's testimony, and as I recall it, statements made by Mr. Burchmore, it is claimed that (Rec.,

2197) aside from the differences in the rates themselves as between the interstate scale on the on hand and the Georgia Commission scale on the other hand, there is some difference in the application of those scales themselves.

I want to refer in that connection to my exhibit 108-B, which shows the present rates under the Georgia Commission scale on sand from Gaillard, Ga.

To a number of these stations the short line from Gaillard, Ga., which is located on the Southern Railway, to these stations in Georgia on the Southern Railway, are made over the Southern Railway. In other cases, and in numerous cases, in fact, the short line distances are not over the Southern Railway, but over joint line routes.

Now, take one point on the exhibit, Brunswick, Ga., the last point on page 4 of the exhibit. The short line distance is 223 miles, and the exhibit shows that distance is calculated via Southern Railway, Fort Valley, Ga., Central of [fol. 711] Georgia Railway, Montezuma, Ga., and Atlanta, Birmingham & Coast R. R.

Now, under the order of the Georgia Commission for that short line distance, we may not charge from Gaillard, Ga., to Brunswick, Ga., more than $1.50 per ton. It may be true that over the route of the Southern Railway, which is 322 miles, that speaking technically we may not be required under the order of the Georgia Commission to apply the same rate that is determined by the short line distance (Rec., 2918) of 223 miles, but as a practical matter we have got to charge the same rate or forego handling the traffic, and it is substantially the same situation on interstate traffic. The rate may be determined via one route, although you may have another route that ordinarily handles the traffic, and that other route may be longer than the short line route, and if it wishes to participate in the traffic necessarily it must charge the same rate as made by the short line distance.

There are any number of instances on the Southern Railway where the lowest rates from Gaillard, Ga., would be determined under the Georgia Commission's scale by joint line distance and not by single line distances over the Southern Railway, although the rates themselves from Gaillard, Ga., to these Southern Railway stations are restricted so they apply only over the Southern Railway.

Cross-examination.

By Mr. Burchmore:

The present rate from Gaillard, Ga., to Brunswick, Ga., is $1.50 (Rec., 2199), and if the 17517 scale were applied, as it is now applied on interstate traffic, by the Southern [fol. 712] Railway or other lines interstate in the transportation from Gaillard to Brunswick, the rate would still be $1.50 per ton, but that would not be true of many other stations shown on pages 3 and 4 of the same exhibit directly intermediate to Brunswick. I am not complaining of the Georgia Commission so far as Brunswick is concerned. I am merely illustrating how the rate to Brunswick applies, and what I said as to Brunswick applies also to the other stations shown on the exhibit.

Q. Can you give me one where you are complaining that there is something wrong from which the Southern Railway should have relief against the Georgia Commission's order, and where the mileage is figured by short hauling, if that be the word, the Southern Railway? I ask that because there seems to be so many destinations on that exhibit where the symbols of routes indicate a mileage intrastate that is a one line route.

A. Well, if you will look on page 3 of the exhibit and also on page 4 of the exhibit, you will find that distances figured over joint line routes determine the rates from Gaillard, Ga. (Rec., 2200). Since you bring in the question of rates, I was not discussing the question of rates, but I was merely illustrating the application of the rates, but if you want to take a case where there is a difference in rate, let us take a destination at the bottom of page 3 of the exhibit where the present rate is $1.40 from Gaillard to Everett, Ga., and the docket 17517 scale would be $1.50 per ton. Now, the rate of $1.40 now in effect from Gaillard to Everett, is based on the distance of 206 miles figured via Southern Railway, Fort Valley, Central of Georgia, Montezuma, Atlanta, Birmingham & Coast, Vienna, Georgia, Southern & Florida, Cordele, Seaboard [fol. 713] Air Line, Helena, and Southern Railway. Actually the rate applies only over the Southern Railway, and I will give you the distance over the Southern Railway. The distance from Gaillard, Ga., to Everett, Ga.,

over the Southern Railway is 303 miles, and that is the only route over which the rate from Gaillard to Everett, Ga., applies. That is the only route by which the rate applies (Rec., 2201).

By Mr. Burchmore:

Q. Do you mean to say that the Georgia Railroad Commission's order of March 13, 1928, requires the Southern Railway to transport sand and gravel from Gaillard over its line to Everett, a distance of 303 miles, at a rate of $1.40 or at any rate less than $1.50?

A. As a practical matter, yes, sir, we must either do that or close our route to the business.

Q. Is there any language in that or other order of the Commission that requires you to do that?

A. The order does not in terms require it but we have to forego handling the traffic over our own route or apply the rate that is made for the short line distance (Rec., 2202).

It is not a competitive situation, but the Georgia Commission says that for the short line the rate is so much. Now that is a maximum rate for that short line distance. Now, if we want to apply that rate over our own rails, we have got to apply the short line rate and keep open the other route.

By Mr. Burchmore:

Q. But suppose you did not publish $1.40 from Gaillard to Everett by the Southern Railway direct simply to meet a 206 mile route, including other carriers, what rate could you carry under the terms of the Georgia Commission's [fol. 714] order without violating that order?

A. Well, we could carry the scale rate for the actual distance, and we can do the same thing now under the interstate scale.

Mr. Burchmore: Yes, that is right (Rec., 2203).

(Witness excused.)

A. J. RIBE was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Cotterill:

My Exhibit 197-B shows the exact extent to which single line and joint line scales under docket 17517 are applicable from Alabama City, Ala., to all points within the state of Georgia, both on Trunk Lines and Short Lines.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 197-B, Witness Ribe.")

On page 3 of this exhibit it is shown that the total single line mileage applicable from Alabama City is 1024 miles, or 15.27 per cent, while the remainder of the mileage within Georgia is subject to the joint line scale from Alabama City, and the percentage is 84.73 (Rec., 2204).

It was my understanding that preceding adversary witnesses regarded as single line movements all possible mileage where the origin and destination were on the same railroad. That is correct, for instance, Mr. Cotterill, as illustrated by the situation shown on several of the exhibits from Montgomery to Louisville & Nashville stations [fol. 715] in Georgia. It is true that there is a single line route available, but that single line route is north from Montgomery through Decatur, Ala., and Nashville, Tenn., to Lebanon Junction just south of Louisville, across the state of Kentucky to Sinks, Ky., and thence down into Georgia through Knoxville, Tenn.

In my exhibit I set forth the mileage within Georgia to which the joint line arbitrary is in fact charged in connection with interstate movements from Alabama City, and for the purpose of that exhibit I checked out the specific rates from Alabama City to every point in Georgia and found whether they were made on single line or joint line scale (Rec., 2205).

My next two exhibits are exactly alike in character except that they relate respectively to Birmingham and Montgomery.

(The same was thereupon received in evidence, marked "Shippers' Exhibits Nos. 198-B and 199-B, Witness Ribe.")

Birmingham, while a potential shipping point, is not an actual shipping point. In exhibit 198-B I have used Birmingham as the point of origin, which is a potential shipping point, but which has never been an actual shipping point for slag or any of the other commodities here involved. The largest shipping point at the present time in the Birmingham district is Ensley, Ala., which is not within the Birmingham switching limits, and which is not reached by the rails of the Atlanta, Birmingham & Coast and the Central of Georgia R. R.; therefore, when we got from the principal shipping point of Ensley in considering this exhibit 198-B, we must deduct the single line mileage shown for those two carriers, which as to Ensley, makes the percentages 16.5% single line, and 83.5% joint line.

[fol. 716] Also, that today there is a new slag plant going up at Fairfield, Ala., which is within the Birmingham district, and which point is reached only by the Birmingham Southern R. R., which terminates at Birmingham. When that plant is in operation its hauls to Georgia will be joint line 100%.

Since the 17517 rates were made effective, I have been almost continually checking the point to point rates established by the carriers from Montgomery and points in the Birmingham District and have found them almost 100% perfect (Rec., 2207). The only instance that I recall was some five or six stations on the Central of Georgia in the vicinity of Alabama. I found that the rates were not on the scale and the formula prescribed by the Commission, and I had the rates corrected.

Exhibit 199-B, as I have said, is similar to the other exhibits, and it shows that from Montgomery the single line scale to Georgia has application to the extent of 29.7 per cent, and the joint line scale has application to the extent of 70.3%.

In connection with that exhibit, I would like to refer to Mr. Price's exhibit 178-B, which besides Montgomery names five other shipping points for sand and gravel in the Montgomery district. Those points, or rather three of them, are Jackson's Lake, Prattsville Junction and Coosada, Ala., all three of which are local stations on the Louisville & Nashville R. R. immediately north of Mont-

gomery, and which involve joint hauls to Georgia 100% (Rec., 2208).

The fourth point is Chehaw, Ala., on the Western of Alabama, which point has the single line scale only to points on the line of the Atlanta & West Point.

[fol. 717] The fifth point is Mitylene, Ala., which under the docket 17517 scale has the single line scale only to points on the Seaboard Air Line between Montgomery and Savannah, including the branches of that line.

Cross-examination.

By Mr. Burchmore:

Q. Now, I want to ask you to comment on this, namely, that according to Witness Crane's exhibit 137-B, page 3, the rates in effect from Montgomery, Ala., to stations on the Southern Railway are made under the 17517 scale as applied to certain mileages. One of his destinations is Helena, Ga. Is it not a fact that Helena, Ga., is on the line of the Southern Railway between Atlanta and Brunswick, where you show 275 miles to which the joint line scale applies, and no miles to which the single line scale applies? (Rec., 2209).

A. That is correct, yes, sir.

Q. Now, Mr. Crane's exhibit shows that to Helena, Ga., from Montgomery, Ala., over the Southern Railway the rate is $1.40, which is the rate for 223 miles single line under docket 17517, made by using 223 miles single line route of the Seaboard Air Line. Now, there is one station on the Southern Railway to which the single line scale applies, and not the joint line scale, isn't there?

A. Yes, sir, that is correct. However, Helena, on the same exhibit, is included single line under the heading of Seaboard.

[fol. 718] Q. But I am not asking about that. Here is a piece of track, namely, the track from Atlanta to Brunswick, over which, if the Southern Railway hauls any sand and gravel from Montgomery destined to the station of Helena, the rate charged is a rate under the single line mileage scale for 223 miles according to Mr. Crane's exhibit, isn't that true?

A. That is true, and that is the mileage over the Seaboard Air Line from Montgomery to Helena, which mile-

age for single line haul is credited to single line on page 2 of my exhibit under the heading of Seaboard Air Line (Rec., 2210).

Q. But if the joint line scale applied from Montgomery to Helena, Ga., on the Southern Railway the rate would be very substantially higher than the rate of $1.40, wouldn't it?

A. That is obvious, yes, sir.

Q. Now, you show on this same page Columbus. Columbus, Ga., is a station on the branch of the Southern Railway from McDonough to Columbus, is it not?

A. Yes, sir.

Q. Isn't it true that both to McDonough at one end, and to Columbus at the other end, the rates are actually made on the single line scale basis of a shorter single line route instead of the joint line scale which your exhibit represents as applied?

A. Did I understand you to say the whole line or did you limit that to Columbus?

Q. Only to McDonough at one end and Columbus at the other.

[fol. 719] A. McDonough, as I recall, is a station of the Southern Railway and the joint scale applied to McDonough.

Q. It is true, though, that at Columbus the rate in effect—and this is shown on page 2 of Mr. Crane's exhibit 137-B—from Montgomery over the Southern Railway is the rate produced by applying the Commission's 17517 single line scale to a certain mileage, and is not the rate produced by applying their so-called joint line scale to any mileage? (Rec., 2211).

A. I would seriously doubt it, Mr. Burchmore. I want to explain why I doubt it.

Q. Here is why I ask that: Mr. Crane's exhibit show Columbus, Ga., Southern Railway route K, which is Central of Georgia direct as the short line, 95 miles.

A. The reason I would doubt that, Mr. Burchmore, is that the rate from Montgomery to Columbus is made over the short route, which does not embrace any part of the line of the Southern Railway. I cannot recall any route in connection with the Southern Railway that would not probably exceed the routing circuity allowed by the Commission and, therefore, if the business was handled in con-

nection with the Southern Railway I am quite certain that the joint scale would be applied.

Q. The Southern Railway does not reach Montgomery? A. No, sir.

Q. Can you state what the rate is from Montgomery to Columbus via the Southern Railway as delivering carrier, from an examination of Glenn's tariff?

A. No, sir. Because you would have to look at the map [fol. 720] first and find out the shortest route in connection with the Southern Railway, then figure your mileage over that route to see what the percentage of circuity was, and then go to the mileage scale in the back of Glenn's tariff to find out what the rate was for that distance (Rec., 2212).

Q. Would it be possible for you to do that in a minute or two?

A. No, it would not.

Q. Then turn to your exhibit 198-B, which deals with the situation from Birmingham. You show the Atlanta & West Point R. R., West Point to Atlanta, 90 miles, to which the joint line scale applies, no miles to which single line applies. Is LaGrange, Ga., a station on the Atlanta & West Point between West Point and Atlanta?

A. It is.

Q. I ask your comment on the fact that according to Mr. Crane's exhibit 137-B the rate from Birmingham, Ala., on slag to LaGrange, Ga., is 130 cents per net ton, being the 17517 scale rate for 166 miles single line distance over the route of the Atlanta, Birmingham & Coast Railway, and ask you whether LaGrange is not a point to which the single line scale applies?

A. The single line scale applies to LaGrange—I do not recall what the rate is—and that is credited on this exhibit under the heading of Atlanta, Birmingham & Coast, it is credited to the Atlanta, Birmingham & Coast R. R. (Rec., 2213).

Q. And yet there is a station to which if material moves [fol. 721] from Birmingham via the route of the Atlanta & West Point R. R. the rate applied thereon is the rate ascertained under the single line mileage?

A. That is correct. Now, Mr. Burchmore, I would like to clear that up for your benefit by using the Atlanta &

West Point on exhibit 198-B. You will notice that I show from West Point to Atlanta a distance of 90 miles that the joint scale applies. Now, the one exception is LaGrange. I could have come up to the outskirts of LaGrange on the one side and started at the outskirts of LaGrange on the other.

Q. And subtracted the mileage within the city of LaGrange? Which is correct?

A. When you get to Atlanta you have the single line rate made over either the Southern Railway or the Seaboard Air Line, but I had to run that 90 miles into Atlanta to include the mileage from the first station out of Atlanta to Atlanta.

Q. But if you had subtracted this little bit of mileage that you say is involved at LaGrange, you would have had something on the single line scale, wouldn't you?

A. Yes, sir, and I could repeat the same thing 40 or 50 times on the exhibits (Rec., 2214).

Q. And if a shipment moved over the Atlanta & West Point R. R. to LaGrange under the single line scale of 166 miles, the Atlanta & West Point would have hauled it a number of miles over its rails, wouldn't it?

A. 30 or 40 miles.

[fol. 722] Q. And would you call those 30 or 40 miles practically nothing because it is only one station?

A. You are comparing mileage one way and I have shown it another. They are not comparable.

Q. Isn't it generally true as to your exhibits 197-B and 198-B and 199-B, that the destinations to which you have shown mileage in the second column may actually take freight rates that are arrived at by applying the so-called single line scale to a single line mileage and not by applying the joint line scale to a joint line mileage?

A. Not to all of these points.

Q. No, I say to some?

A. Just a few of them, and it would not change the percentages one percentage point.

Q. Is it not also true that over the railroads which you have here shown in some cases the mileage you have shown under the single line scale column in point of fact is stations where a lower rate is produced by taking another route under the joint line scale?

A. No, sir. In making up these exhibits in quite a few instances we found that the same rate could be arrived at by the use of a single line route and be used as a joint line route, and in all such instances we used the single line mileage and not the joint line (Rec., 2215).

Q. Well, I want to call your attention then to a situation; If you re-wrote your exhibit 199-B in this form, namely, to show the number of stations to which single line [fol. 723] scale applies, and the number of stations to which the joint line scale applies, you would have in many cases stations to be inserted under the second column where now you show no mileage, isn't that true?

A. No, sir.

Q. What I mean is, on the second page of exhibit 199-B, for instance, Southern Railway Atlanta to Brunswick, you show in the second column 275 miles to which joint line scale applies, first column, no miles to which single line scale applies. If you re-wrote that to show the number of stations on the Southern Railway between Atlanta and Brunswick you would have one or more stations under the first column which shows no mileage, and you would have 274 or less stations under the second column where you now show 275?

A. Those are not stations, those are miles.

Q. I beg your pardon, that is right. You would have one or more stations under the first column to which you show no mileage? (Rec., 2216.)

A. If you repeated the junction points on every line you would duplicate these junction points.

Q. I am speaking of a station on the Southern Railway to which the single line scale makes the rate via the Southern Railway to which the single line scale via some other road makes the rate via the Southern Railway.

A. If I was making up a statement showing the number of stations and number of miles under which the single line and the joint line scale apply following the Commission's [fol. 724] decision in docket 17517 and its formula, Helena would come under the line of the Seaboard Air Line as a single line station, and would not appear under the Southern Railway at all.

Q. Where would you put Helena as a destination on the Southern Railway with respect to the rate charged by the

Southern Railway from Montgomery on movements over its line?

A. I would not put Helena under the Southern Railway if I was listing them by station numbers.

Q. I see.

A. You understand, Mr. Burchmore, these few little exceptions that you have found here, if you go from Jackson's Lake, Prattville Junction and Coosada, local stations on the Louisville & Nashville in the Montgomery district, or from Ensley, Ala., the actual shipping point for slag in the Birmingham district, these exceptions as to LaGrange, Helena, and so forth could not be made (Rec., 2217).

(Witness excused.)

Mr. Gwathmey: If there are no other witnesses, I wish to offer at this time corrected page 14 of Witness Doss' exhibit 100-B. Mr. Doss was asked to file this during the hearing, and I have already handed it in and distributed copies (Rec., 2218).

Exam. Waters: Any more testimony to be offered in the case?

Mr. Burchmore: Except that I wish to ask the Commission to require the tonnage figures I have already requested. [fol. 725] Exam. Waters: Briefs are set for January 14, 1929.

Mr. Cotterill: I assume that this is to be a proposed report case.

Exam. Waters: As far as I know it is. Hearing closed.

[fol. 726] IN UNITED STATES DISTRICT COURT

[Titles omitted]

STIPULATION AND ORDER EXTENDING TIME—Filed Oct. 15, 1930

It is hereby stipulated by and between undersigned counsel for parties of record in the above entitled cases, that the time within which the Georgia Public Service Commission, and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T.

Knight, as Commissioners thereof, and the State Highway Board of Georgia, et al., complainants, shall furnish, serve and file in the office of the clerk of the District Court, their narrative statement of the testimony and exhibits contained in the transcript of record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of the record of this Court on Appeal and their designation for the record of additional appeal papers which have been filed, and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with [fol. 727] the Clerk of the Supreme Court of the United States, may be further enlarged to and including Tuesday, the 18th day of November, 1930.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, S. J. Smith, Jr., Solicitors for Complainants in No. 563. Edgar Watkins, Mac Asbill, Solicitors for Complainants in No. 565. Elmer B. Collins, Special Assistant to the Attorney-General, for United States of America. Edward M. Reidy, for Interstate Commerce Commission. J. A. Streych, for the Gainesville and Northwestern Railroad Co. (G. A. Austin and Sidney Smith, Receivers). J. E. Tifford, for Atlanta & West Point Railroad Co., Georgia Railroad, Atlanta, Birmingham & Coast Railroad Co., Louisville & Nashville Railroad Co., Nashville, Chattanooga & St. Louis Railway Co., Seaboard Air Line Railway Company, Central of Georgia Railway Co. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Co. et al. W. N. McGehee for Southern Railway Co. et al.

[fol. 728] Order Further Enlarging Time Within Which to Docket the Cases and File the Record Thereof

Upon the attached stipulation of counsel, and it appearing that the parties and their respective counsel are distant; and that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and pro-

ceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare, and certify the transcript of the record of this Court on the Appeal, and for other good cause shown:

It is ordered that the time in which the Georgia Public Service Commission, and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, and the State Highway Board of Georgia, et al., complainants, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and their designation for the record of [fols. 729 & 730] additional appeal papers which have been filed, and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, heretofore enlarge- to and including Wednesday, the 15th day of October by order of this Court, be and it is hereby, further enlarged to and including Tuesday, the 18th day of November, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Saml. H. Sibley, United States District Judge.

Dated —— —, ——.

[fol. 731] [File endorsement omitted.]

[fol. 732] In United States Supreme Court

Stipulation re Exhibits—Filed Dec. 2, 1930

The exhibits numbered 1 to 244, inclusive, and numbered 98B to 199B, inclusive, as referred to in the certified copy of the transcript, and two unnumbered exhibits and the tariff schedules likewise there referred to, shall stand as original exhibits and shall be incorporated in the record upon appeal.

On the hearing of the appeal before the Supreme Court in the above-entitled cases, the original exhibits, together with the tariff schedules above referred to, need not be

[fol. 733] printed; but either side or any party by counsel, or the Court or any member thereof, may refer to such documents, or to any one or more of them or to any part or portion thereof, with the same force and effect as if the same had been printed in full in the transcript.

John S. Burchmore, Mac Asbill, J. S. B., Solicitors for Plaintiffs. Elmer B. Collins, E—, Special Assistant to the Attorney General, for the United States. Edward M. Reidy, for Interstate Commerce Commission. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Company et al. W. N. McGehee, J. S. B., for Southern Railway Company et al. Charles E. Cotterill, for Roquemore Gravel Company et al., Interveners. Alston, Alston, Foster & Moise, for Atlanta and West Point R. R. Co.

[fol. 734] [File endorsement omitted.]

[fol. 735] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Dec. 3, 1930

Now come the appellants, in the above entitled cause and in accordance with paragraph 9 of rule 13, state that the points on which they intend to rely in this court are as follows:

Points on Which Appellants Intend to Rely

The order of the Interstate Commeree Commission here involved, entered December 9, 1929, should have been enjoined and set aside by the District Court of the United States for the Northern District of Georgia, Atlanta Division, three judges sitting, for each and all of the reasons set out in the appellants' assignments of error (Record, 227-233), and from these assignments of error the points arise on which the appellants intend to rely in this court, as comprehended in the following summary:

1. The said District Court erred in not enjoining the aforesaid order of the Interstate Commerce Commission

here under attack, because the said order exceeds the powers which the said Commission constitutionally could exercise, and constitutes a regulation of and interference with intrastate commerce, not shown to affect or to be burdensome upon commerce among the states.

[fol. 736] 2. The said court erred in not enjoining the aforesaid order on the ground that said order was entered in violation of the fifth amendment to the Constitution of the United States, the due process clause, in the following particulars:

(a) The issues were limited under the Commission's orders instituting and reopening the inquiry so as to exclude the question of the reasonableness of the rates for the future for intrastate transportation in Georgia and for interstate transportation.

(b) While the Interstate Commerce Act puts the burden of proof on the carriers in any proceeding involving railroad freight rates proposed to be advanced, the said Commission did not require the carriers to assume such burden and refused to receive any evidence as to the reasonableness of the proposed increased rates which it afterwards prescribed as minimum rates for intrastate transportation in Georgia.

(c) There was not a full hearing and due investigation by the said Commission.

3. The said court erred in not enjoining the aforesaid order on the ground that the order was beyond the statutory power of said Commission, in the following respects:

(a) The said order requires numerous reductions in rates for intrastate transportation in Georgia, contrary to the limitation in paragraph (2) (a), of section 1 of the aforesaid Act.

(b) The said order creates numerous violations of the so-called long and short haul clause in paragraph (1) of section 4 of said Act.

[fol. 737] (c) Only discriminations which are unjust and preferences and prejudices which are undue or unreasonable are forbidden and made unlawful by paragraph (1)

of section 3 and by paragraph (4) of section 13 of the Act. There was no substantial evidence of similarity of transportation conditions and identity of carriers in connection with the state and interstate rates to sustain findings of undue preference and unjust discrimination, which said Commission is empowered to remove.

(d) The aforesaid order seeks to impose a rate formula on intrastate commerce in Georgia, and no power has been conferred on said Commission to prescribe rate-making formulas, as such, its authority under sections 15 and 13 of said Act being limited to prescribing reasonable and non-prejudicial rates, as maximum rates or as minimum rates, or both, for transportation services.

(e) The said Commission has power to prescribe intrastate rates only upon specific findings under section 13 of the Act; its findings in the aforesaid order are broad and sweeping; and there was no evidence of any violation of said Act in respect of the larger number of intrastate rates in Georgia.

4. The said court erred in not enjoining the aforesaid order on the ground that said Commission in entering said order acted arbitrarily and unjustly and prescribed rates for transportation wholly within the state of Georgia contrary to the evidence and without substantial evidence to support its action, in particulars as follows:

(a) The aforesaid order in effect restrains the Georgia Public Service Commission from requiring the carriers to [fol. 738] charge for intrastate transportation within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, as interstate rates which the same carriers are permitted by the Interstate Commerce Commission to continue charging for interstate transportation.

(b) The aforesaid order purports to rest on the principle that the rates ought to be higher for so-called joint line movements, over the lines of two or more carriers, than for corresponding distances over the individual line of a single carrier; there was no evidence before the Commission tending to support such principle or to show that transportation of the commodities here involved, sand,

gravel, chert, etc., over joint lines is necessarily more expensive than over single line routes; and as to numerous other commodities, such as cement, brick, sugar and fertilizer, the Commission has prescribed scales of carload rates which are identical for single line and joint line movements.

(c) The aforesaid order makes distance the sole element for declaring discrimination against interstate commerce and for fixing and determining the rates to be charged within the State of Georgia and the order is arbitrary in that it ignores all other relevant facts.

(d) The aforesaid order prescribes minimum and maximum rates for actual services of transportation over actual routes of movement in intrastate commerce in Georgia, and the Commission prescribes only maximum rates for interstate transportation, the latter to be made, however, with regard to fictitious mileages, that is to say, with regard to distances over supposed routes that are not used and over which the carriers could not be required to operate as through routes under the limitation in para- [fol. 739] graph (4) of section 15 of the Interstate Commerce Act and of the Fifth Amendment to the Constitution.

(e) The aforesaid order is arbitrary because it was entered on a record which does not show the transportation conditions, or the circumstances and conditions under which the materials in question actually are transported for the respective intrastate movements within Georgia and interstate movements into and out of said State; and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates and interstate rates respectively.

(f) The aforesaid order creates and requires violations of the so-called long and short haul principle expressed in paragraph (1) of section 4 of the Act.

(g) The aforesaid order requires so-called short or weak lines of railroad, against their desire and without evidence of any violation of sections 3 or 13 of the Act, to increase their intrastate rates substantially above the rates of the standard lines and is therefore arbitrary.

5. The said court erred in not enjoining the aforesaid order on the ground that the said Commission in entering said order had in the record before it no substantial evidence to support the essential findings necessary to the entry of a valid order under the provisions of the said Act.

[fol. 740] Parts of the Record Necessary to be Printed.

And the appellants, pursuant to paragraph 9 of Rule 13, now designate to the Clerk of the Supreme Court, the following portions to be printed for the use of this Court in the consideration of the appeal herein of the record as certified by the District Court for the Northern District of Georgia:

The following pleadings, orders, decisions, etc., shall be printed in full, omitting captions and superfluous matter, namely:

Title of paper	Record pages
The original bill of complaint of Georgia Public Service Commission et al. in No. 563	1-15
Exhibit A to aforesaid bill, being the report and order of the Interstate Commerce Commission entered January 21, 1927	16-87
Exhibit B to aforesaid bill, being the order of Georgia Public Service Commission entered March 13, 1928	88-97
Exhibit C to aforesaid bill, being the Interstate Commerce Commission's order entered June 4, 1928	98-100
Exhibit D to aforesaid bill, being the said Commission's report and order entered December 9, 1929	103-132
Exhibit E to aforesaid bill, being petition of Georgia Public Service Commission for rehearing, etc	133-150
The order of the District Court, entered February 20, 1930, for the filing and service of the aforesaid bill and calling a three-Judge Court, etc	151
The answer of the United States to the bill in No. 563	152-154
The answer of the Interstate Commerce Commission to aforesaid bill	155-159

Title of paper	Record pages
The answer of Atlantic Coast Line Railroad Company et al. to aforesaid bill	160-165
[fol. 741] The answer of Alabama Great Southern Railroad Company et al. to aforesaid bill	166-170
The original bill of complaint of State Highway Board of Georgia, et al. in No. 565, (without the exhibits thereto attached, which were the same as the exhibits to the bill in No. 563)	172-185
Note: The order of the Court entered February 25, 1930, for the filing and service of the bill in No. 565 (Rec., 186), and the answers of the United States, Interstate Commerce Commission and other defendants to said bill (Rec., 187-207) are substantially identical with the order and answers in No. 563 and need not be printed.	
The order of the District Court entered March 1, 1930, consolidating Nos. 563 and 565	208
The order of the District Court entered May 12, 1930, assigning the cause for final hearing	209
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The opinion of the District Court, filed March 3, 1930, denying the application for an interlocutory injunction	212-218
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The opinion of Judge Sibley, filed July 5, 1930	220-223
The order of the District Court filed June 25, 1930, dismissing the bills	224
The petition for appeal filed August 23, 1930	225-226
The assignment of errors, filed August 23, 1930	227-233
The order granting the appeal entered August 23, 1930	234
The order and stipulation filed August 23, 1930, enlarging the time in which to docket the appeal, etc	237-238
Stipulation of November 30, 1930, with reference to the narrative of the evidence and the original exhibits	239-241
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The petition of the Georgia carriers to the said Commission, dated June 5, 1925	255
The corrected order of the said Commission, entered October 5, 1925, instituting the investigation in No. 17517	257
The supplemental order of the said Commission, entered January 4, 1926, in said Docket No. 17517	258
The motion of the complainants before the said Commission for the entry of a minimum rate order, filed September 15, 1927	270
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Order entered by Interstate Commerce Commission June 4, 1928, reopening Nos. 17517 and 17763	291
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Order of Interstate Commerce Commission, entered January 14, 1929, denying the motion of the Georgia Public Service Commission	302

Title of paper	Record pages
Order of Interstate Commerce Commission, entered February 3, 1930, denying the petition for rehearing of the Georgia Public Service Commission in No. 17517	305
Stipulation filed with this Court further enlarging to November 18, 1930, the time for completing the narrative abstract and docketing the appeal, with order of District Court approving the same.	
[fol. 743] The entire narrative abstract of evidence before the Commission, consisting of 725 pages.	
Stipulation filed in this Court with reference to original exhibits.	
Appellants' statement of points on which appellants intend to rely and designating parts of record to be printed.	

Respectfully submitted.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, John S. Burchmore, 1522 First National Bank Bldg., Chicago, Illinois, Solicitors for Georgia Public Service Commission et al. Appellants.

Mac Asbill, Edgar Watkins, Mac Asbill, 403 Atlanta Trust Co. Building, Atlanta, Georgia, Solicitors for State Highway Board of George et al. Appellants.

[fols. 744 & 745] UNITED STATES OF AMERICA,
District of Columbia, ss:

Personally appeared before me, John S. Burchmore, who on oath states that he is one of the attorneys for the appellants, Georgia Public Service Commission, et al., in that certain case pending in the Supreme Court of the United States and returnable to the October term, 1930, entitled Georgia Public Service Commission, et al., v. United States of America, et al.; that in compliance with paragraph 9 of rule 13 of the rules of said court, affiant has designated the points on which appellants rely and the parts of the record necessary to be printed; that the original of such designation is herewith forwarded to the clerk of the Supreme Court of the United States; and that a copy of said original

this day has been served in person or sent by registered mail, postage paid, to each of the attorneys for the appellees, namely, Mr. Elmer C. Collins, Special Assistant to the Attorney General for the United States, Mr. E. M. Reidy, for the Interstate Commerce Commission, Mr. Robert C. Alston, for the Atlantic Coast Line Railroad Company, et al., Mr. W. N. McGehee, for Southern Railway Company, et al., and Mr. Charles E. Cotterill, for Roquemore Gravel Company, et al.

John S. Burchmore.

Subscribed and sworn to before me this 2nd day of December, 1930. E. M. Noland, Notary Public. (Seal)

[fol. 746] [File endorsement omitted.]

Endorsed on cover: File No. 35,477. N. Georgia D. C. U. S. Term No. 555. Georgia Public Service Commission, James A. Perry, Albert J. Woodruff, et al., etc., Appellants, vs. The United States of America and the Interstate Commerce Commission et al. Filed November 18, 1930. File No. 35,477.

FILE COPY

DEC 18

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. 555

GEORGIA PUBLIC SERVICE COMMISSION and JAMES A. PERRY, ALBERT J. WOODRUFF, WALTER R. McDONALD, CALVIN W. PARKER, and PERRY T. KNIGHT, as COMMISSIONERS THEREOF,

Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION;

Appellees.

CONSOLIDATED WITH

STATE HIGHWAY BOARD OF GEORGIA, et al.,

Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Appellees.

RULE TWELVE STATEMENT

LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
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BARNARD & MILLER PRINT, CHICAGO

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Appellees.

CONSOLIDATED WITH

STATE HIGHWAY BOARD OF GEORGIA, et al.,

Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Appellees.

RULE TWELVE STATEMENT

Come now the Georgia Public Service Commission and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker and Perry T. Knight, as Commissioners thereof, and, the State Highway Board of Georgia, *et al.*, appellants in the above entitled cause, and, in compliance with Rule 12 of the Rules of Practice of this court respectfully show the following reasons and authority for

the jurisdiction of this court to review the decree of the court below:

1. This court has jurisdiction over this appeal under Section 47, Title 28, U. S. Code, and also under Section 345, Title 28, U. S. Code, being Judicial Code, Section 238, as amended, relating to direct reviews by the Supreme Court.

2. The order sought to be reviewed (Rec., 224) was entered on June 25, 1930, by a court of three judges convened in accordance with the provisions of said Section 47, Title 28, U. S. Code, relating to review of orders of the Interstate Commerce Commission. (Rec., 151, 186.)

3. The suits in which the judgment was rendered from which the appeal was taken were brought to enjoin and set aside orders of the Intersate Commerce Commission and to enjoin the defendant railroads from filing and making effective any tariffs in accordance with such orders. The United States and Interstate Commerce Commission and interested railroads were made parties defendant. (Rec., 1-14, 172-185.) The separate bills of complaint of Georgia Public Service Commission, *et al.*, and of the State Highway Board of Georgia, *et al.*, set out in full the reasons why appellants claim that they were entitled to the injunction prayed. (Rec., 1-14, 172-185.)

The United States answered. (Rec., 152.) The Interstate Commerce Commission answered. (Rec., 155.) The Atlantic Coast Line Railroad Company, *et al.*, answered. (Rec., 160, 166.) The Roquemore Gravel Company, *et al.*, intervened as parties defendant. (Rec., 210.) The two causes were consolidated by order entered March 1, 1930. (Rec., 208.)

Three judges, one circuit judge and two district judges heard the case, and writing an opinion (Rec., 212-218),

denied the application for an interlocutory injunction. (Rec., 219.) The same judges later heard the application for a permanent injunction, and, writing an opinion (Rec., 220-223), denied the application and dismissed the bill. (Rec., 224.)

In accordance with Section 47, of Title 28, U. S. Code, and within thirty days an appeal was taken direct to this court from such order denying, after notice and hearing, the relief prayed and dismissing the bills. (Rec., 225.) Assignments of error were filed. (Rec., 227-233.)

4. This court has sustained its jurisdiction in numerous similar cases. Among such cases the following are typical: *Louisville & N. R. Co.* v. *United States*, 238 U. S. 1; *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563; *Akron, C. & Y. R. Co.* v. *United States*, 261 U. S. 184, 189; *Virginian R. Co.* v. *United States*, 272 U. S. 65; *State of Alabama* v. *United States*, 279 U. S. 229.

Respectfully submitted,

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